

**COMPILATION OF SPECIAL PROCEDURES' RECOMMENDATIONS**  
**BY COUNTRY**

**2009**

1. The document is prepared on the basis of decision 2/102 of the Human Rights Council entitled "Reports and studies of mechanisms and mandates", which requested the Secretary-General of the United Nations and the High Commissioner for Human Rights "to continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies," in particular resolution 2004/76 of the Commission on Human Rights' on Human Rights and Special Procedures, which requested the High Commissioner "to continue to prepare a comprehensive and regularly updated electronic compilation of special procedures' recommendations by country, where such does not yet exist".
2. The present document compiles conclusions and recommendations by thematic and country-specific special procedures contained in their reports submitted to the Human Rights Council at its tenth session<sup>1</sup> (2-27 March 2009), eleventh session (2-19 June 2009), and twelfth session (14 September – 2 October 2009). This document is posted on the OHCHR's web site:  
<http://www2.ohchr.org/english/bodies/chr/special/index.htm>
3. In addition to country mission reports of thematic mandate holders and annual reports of country mandate holders, this document contains in its Annex I, conclusions and recommendations from thematic special procedures' annual and other reports submitted in 2009.
4. Annex II contains a list of all Special Procedures' country visits which took place in 2009. It should be noted that some reports of missions which took place in 2009 have only been presented to the Human Rights Council in 2010, therefore, the conclusions and recommendations of such reports will be contained in the 2010 issue of this compilation, to be published in 2011.
5. For 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: <http://www2.ohchr.org/english/bodies/chr/special/visits.htm>

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<sup>1</sup> Previous annual compilations are available on the OHCHR website (under Information tools):  
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## COUNTRY MISSION REPORTS

### Afghanistan

#### Introduction

During the period under review, the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Afghanistan from 4 -15 May 2008 (please refer to document A/HRC/11/2/Add.4).

#### Conclusions and recommendations (A/HRC/11/2/Add.4, para.67-90)

67. The Government of Afghanistan, the international military forces and the Governments who send them, and the Taliban and other anti-government elements all have a responsibility to take urgent action to reduce civilian casualties and to end unlawful killings in Afghanistan. My recommendations follow.  
Killings by the international and afghan military forces

68. The international forces should review procedures to ensure that air strikes and close air support are delivered only when sufficient measures have been taken to verify the identity of the target and that the incidental loss of civilian life would not be excessive in relation to the anticipated concrete and direct military advantage.

69. The international and Afghan forces should review the circumstances in which they conduct unannounced night-time raids, to identify situations in which alternative measures less dangerous to other residents might be employed.

70. Air strikes, raids and other attacks should never be based solely on conduct considered “suspicious” or on unverified “tips”. Rather, the Government and international military force (IMF) should review intelligence sharing arrangements, develop procedures for more reliably vetting targets, and ensure that attacks are only conducted based on adequately verified information.

#### Killings by the Taliban

71. The Taliban should cease employing means and methods of warfare that violate international humanitarian law, and result in the unlawful killing of civilians. The Taliban leadership should issue clear orders to those carrying out attacks to abide by international law. This particularly includes the following:

- (a) To stop threatening and assassinating civilians in all circumstances, including for their alleged failure to cooperate with the Taliban or for their decision to cooperate with the Government;
- (b) To cease using civilians as “human shields” to deter attacks by international and Afghan military forces;
- (c) To stop targeting civilians in suicide attacks, and cease engaging in perfidy (unlawful deception) during such attacks, including by disguising themselves as civilians, soldiers or police.

72. A serious effort should be made - including by human rights groups and inter-governmental institutions - to pressure and persuade the Taliban and other armed groups to respect human rights and humanitarian law. This effort should include developing contacts with them for the sole, dedicated purpose of promoting respect for human rights. Such efforts should be undertaken subject to security feasibility and in conformity with the provisions of Security Council resolution 1267.

#### IMF responses to civilian casualties

73. The international forces should ensure that allegations that soldiers have committed unlawful killings are fully investigated, and ensure that soldiers who have committed unlawful killings are prosecuted.

74. The international military forces should cooperate more fully with outside efforts - especially those of UNAMA and of the Afghanistan Independent Human Rights Commission - to investigate killings.

This should include the expedited declassification and more comprehensive sharing of relevant information, including video footage and mission story-boards.

75. At the conclusion of military investigations into killings of civilians, information on the findings and reasoning should be made public. Such information should be provided to the families of the victims. In particular, the reasoning of the US Court of Inquiry decision on the 4 March 2007 Nangarhar incident should be made public.

76. The international forces should ensure that, despite the complexity of multiple mandates and disparate national criminal justice systems, any directly affected person can go to a military base and promptly receive information on who was responsible for a particular operation, or what the status is of any investigation or prosecution. To this end:

(a) Where the actions of soldiers are investigated or prosecuted within the troop-sending country, the progress of national processes of investigation, discipline and prosecution should be reported back to ISAF headquarters in Afghanistan;

(b) The progress and outcomes of national processes of investigation or prosecution should be centrally tracked by ISAF;

(c) This information should be made available to the various regional commands, to the Provincial Reconstruction Teams under their command, and provided to directly affected persons when requested.

77. When a raid is conducted by foreign intelligence personnel and Afghan forces outside the ANA's chain-of-command, the responsible Government should publicly clarify its involvement when allegations of abuse are made.

78. The international military forces should provide public information on the estimated numbers of civilians killed and wounded in air strikes, raids, and other military operations.  
Compensation for victims

79. The various domestic and international compensation programs should be better coordinated. This might usefully involve a high-level policy body that would help the various programs to operate in a complementary fashion and an operational information-sharing body that would allow for greater consistency and that would help prevent individual cases from falling through the cracks.

80. Even where compensation programs involve *ex gratia* payments that carry no admission of legal liability, the discretion of commanders in deciding whether to grant compensation should be more limited, and general guidelines for making payments should be clearly set out.

81. Commanders should seek out victims and their families rather than waiting to receive a complaint or request. In particular, the obstacles women face in accessing compensation and other payments should be taken into account in implementing such programs.

Afghan National Police

82. Ending unlawful killings by the police should be a priority. To that end, there should be a concerted effort to reform the police:

(a) Human rights training, while important, will not be sufficient to prevent abuses that are driven by the links between police officers and particular tribes, commanders, and politicians. These links must be broken in order to establish a national police force that serves and protects the entire community;

(b) Continued efforts to reconstruct the police force as a truly national and professional force are vital. The "focused district development" training should be strongly supported;

(c) All efforts to supplement the police by establishing or legitimizing local militias should be abandoned.

83. Impunity for killings by police must be urgently addressed:



(a) The interminable dragging out of government investigations and inquiries into alleged police killings until such episodes are effectively forgotten reinforces impunity. Instead of setting up *ad hoc* inquiries that go nowhere, a national police investigative task force is needed;

(b) In addition, the Afghanistan Independent Human Rights Commission's investigative powers should be strengthened and the Government should have a time limit within which to respond to its findings.

84. The debate over whether the police force should play a primarily "law enforcement" or "paramilitary" role is unhelpful. At this stage the police are clearly obliged to play both roles and should be structured and trained accordingly so that they can provide security to the populations they serve.

Criminal justice system

85. The proper investigation of crimes is hampered by poor coordination between police and prosecutors. The relationship between police and prosecutors needs to be improved: The Minister of Interior and the Attorney General should agree on how to cooperate on the combined process of detection and investigation of crimes, and simultaneously issue the appropriate orders to police and prosecutors.

86. The situation of half of the population - women - in relation to killings is largely ignored. The criminal justice system must be made accessible to them:

(a) Initiatives such as women's referral centres should be supported and encouraged;

(b) A special office for female victims should be created by the Attorney-General.

87. So-called "honour killings", which occur in very large numbers, must be treated as the murders that they so clearly are. Police should investigate such cases whether or not the family has made a specific complaint to the police.

88. Measures should be taken to address the corruption that obstructs justice at all levels of the criminal justice system:

(a) An independent anti-corruption agency should be established by the Government, with international support, and endowed with the necessary powers and resources to prosecute important cases at all levels of government and the judiciary;

(b) Insofar as international aid money provides the resources on which much corruption thrives, the international community has a responsibility to assist the Government with anti-corruption efforts through a range of mechanisms, including the use of high-level appointment review boards.

89. It is widely agreed that the criminal justice system is not currently capable of reliably respecting fair trial standards. To avoid the execution of innocent persons, the Government should impose a moratorium on the application of the death penalty.

Transitional justice and preservation of evidence of past crimes

90. Mass grave sites, including the site at Dasht-e-Laili, must be secured and preserved by the Government of Afghanistan with international assistance. Investigations into the cause of death of persons, whose bodies are buried there, as well as investigations into any allegations of attempts to remove such evidence, are necessary. Failures to do so will result in continued impunity for those responsible for past abuses, and will undermine the ability of Afghans to obtain an accurate historical record of past crimes that is so necessary to facilitate reconciliation in Afghanistan.

## Argentina

### Introduction

During the period under review, the Working Group on enforced or involuntary disappearances visited Argentina from 21 to 24 July 2008 (please refer to document A/HRC/10/9/Add.1).

### Conclusions and recommendations (A/HRC/10/9/Add.1, para.82-95)

82. Los esfuerzos de búsqueda de los desaparecidos tendrían que ser garantizados mediante medidas legislativas de largo aliento, con el fin de que las políticas gubernamentales se conviertan en políticas de Estado. Lo anterior puede lograrse mediante el establecimiento por el poder legislativo de un organismo público, que goce de autonomía de gestión y financiera, en el que tenga participación tanto el estado como los particulares interesados, y que cumpla con los requisitos previstos en los Principios Relativos al Estatuto y Funcionamiento de las Instituciones Nacionales de Protección y Promoción de los Derechos Humanos, conocidos como los "Principios de París".

83. Sería recomendable que el poder legislativo introdujera reformas a la Ley sobre declaración de ausencia por desaparición forzada, con el fin de superar las debilidades que se describen en el cuerpo del presente informe.

84. Sería recomendable también que el Congreso argentino adoptara las medidas legislativas conducentes a otorgar a la Convención Internacional sobre la Protección de Todas las Personas contra las Desapariciones Forzadas rango constitucional.

85. Se insta respetuosamente al Senado a que concluya exitosamente la reforma al Código Penal Federal mediante la cual se tipificaría el delito de desaparición forzada de personas, tomando en cuenta que "[t]odo acto de desaparición forzada será considerado delito permanente mientras sus autores continúen ocultando la suerte y el paradero de la persona desaparecida y mientras no se hayan esclarecido los hechos".

86. Con el fin de acelerar los procesos judiciales que involucren casos de desaparición forzada, se recomienda i) mejorar los recursos materiales y de personal de la Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas durante el Terrorismo de Estado; y ii) la acumulación de las causas, en razón de centros de detención, región o subregión, con el fin de facilitar la comparecencia de testigos y evitar que los mismos testigos tengan que rendir el mismo testimonio en repetidas ocasiones.

87. Se recomienda la adopción de medidas orientadas a solucionar el problema del retraso en los juicios a causa de las subrogaciones de jueces derivadas de excusas o recusaciones.

88. Resulta de la mayor importancia que el Archivo Nacional de la Memoria mantenga y fortalezca sus actividades de recolección, actualización, preservación y digitalización de los archivos e informaciones vinculados a la vulneración de los derechos humanos por el terrorismo de Estado.

89. Es recomendable que las políticas gubernamentales iniciadas en mayo de 2007 por el Presidente de la nación, mediante las que se creó el Programa de Verdad y Justicia en la órbita de la Jefatura de Gabinete de Ministros, que se encuentra bajo la dirección del Ministerio de Justicia, Seguridad y Derechos Humanos, se consolidaran a través de medidas legislativas, que las conviertan en políticas de Estado que trasciendan a los cambios de gobierno.

90. Sería recomendable que se decretara e instrumentara un Plan de Reparación Integral a los familiares de las víctimas de desaparición forzada, que estuviere confiado a un órgano, creado por un acto legislativo, y que incluyera la participación de la sociedad civil organizada, particularmente de los familiares y seres queridos de las personas desaparecidas.

91. Se recomienda la instalación de un programa de protección de testigos que abarque a los testigos y familiares de los mismos, en casos relacionados con violaciones de derechos humanos, incluyendo la desaparición forzada, mismo que debería ser coordinado por una institución de Estado, pero en la que participen, colegidamente, representantes de las víctimas, representantes de agrupaciones gremiales de profesionistas como abogados y científicos forenses, el Defensor del Pueblo de la Nación, representantes

del poder judicial y de las agencias encargadas de la investigación de los casos. Este programa podría hacerse extensivo, en caso necesario, a abogados defensores y fiscales.

92. Sería recomendable también que el testimonio de un testigo sobre determinados hechos que son materia de distintos juicios pueda servir para todas las causas involucradas.

93. Se sugiere la utilización de apoyos tecnológicos como videoconferencias o videograbaciones, para mantener en confidencialidad la identidad de los testigos, así como para no hacer que los testigos tengan que desplazarse al lugar en donde se está llevando a cabo el juicio.

94. Por lo que se refiere a la protección de la integridad física de los testigos, resulta de mayor importancia que los agentes designados para brindar dicha protección, de preferencia no se encuentren adscritos a las fuerzas del orden que pudieran haber estado involucradas en los delitos que sean materia de la investigación.

95. El Grupo de Trabajo invita al Gobierno de la Argentina a que, en un plazo de 90 días a partir de la fecha de publicación de este informe, presente al Grupo de Trabajo un cronograma en el que se indiquen las medidas que se llevarán a cabo para implementar las recomendaciones del Grupo de Trabajo, las fechas previstas para aplicar cada una de estas medidas y las fechas en las que se tenga previsto concluir con el cumplimiento a las recomendaciones.

## Australia

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Australia from 17 to 28 August 2009. The preliminary note (please refer to document A/HRC/12/34/Add.10) on this visit did not provide detailed conclusions and recommendations. Excerpts provided below are some of the issues that the preliminary note highlights.

### Preliminary observations (A/HRC/12/34/Add.10, para.10-18)

10. Beyond the matter of the Northern Territory Emergency Response, the Special Rapporteur is concerned that there is a need to incorporate into Government programmes a more holistic approach when addressing indigenous disadvantage across the country, one that is compatible with the objective of the Declaration on the Rights of Indigenous People of securing for indigenous peoples not just social and economic well-being, but also the integrity of indigenous communities and cultures, and their self-determination.

11. The above-mentioned approach must involve a real partnership between the Government and the indigenous peoples of Australia, to move towards a future that is fully respectful of the rights of Aboriginal and Torres Strait Islander peoples to maintain their distinct cultural identities, languages and connections with traditional lands, and to be in control of their own destinies under conditions of equality.

12. Given what the Special Rapporteur has learned to date, it would seem that the objectives of the Closing the Gap campaign, the Emergency Response and other current initiatives and proposed efforts of the Government would be best achieved in partnership with indigenous peoples' own institutions and decision-making bodies, which are those that are most familiar with the local situations. It is worth stressing that, during his visit, the Special Rapporteur observed numerous successful indigenous programmes already in place to address issues of alcoholism, domestic violence, health, education and other areas of concern, in ways that are culturally appropriate and adapted to local needs, and that these efforts need to be included in and supported by the Government response, both logistically and financially. In particular, it is essential that funding for programmes that have already demonstrated achievements be continued.

13. The Special Rapporteur observed that, although there are a number of Government partnerships with local initiatives that appear to be succeeding, he also heard many accounts of situations in which Government programmes fail to take into account existing local programmes already in place, thereby hampering their ultimate success. In this connection, the Special Rapporteur is concerned about any initiative that duplicates or replaces the programmes of Aboriginals and Torres Strait Islanders already in place, or that undermines local decision-making through indigenous peoples' own institutions. In addition, international human rights norms, including those contained in the Declaration on the Rights of Indigenous People, affirmatively guarantee the right of indigenous peoples to participate fully at all levels of decision-making in matters which may affect their rights, lives and destinies, as well as to maintain and develop their own decision-making institutions and programmes. Furthermore, adequate options and alternatives for socio-economic development and violence-prevention programmes should be developed in full consultation with affected indigenous communities and organizations.

14. It is also necessary that the meaningful, direct participation of Aboriginal and Torres Strait Islander peoples is ensured in the design of programmes and policies at the national level, within a forum that is genuinely representative of the rights and interests of indigenous peoples. In this regard, the Special Rapporteur welcomes the initiative that is supported by the Government to move towards the development of a model for a new national indigenous representative body, and emphasizes that indigenous participation in the development of this body is fundamental.

15. At the same time, the Special Rapporteur echoes the statements he heard from indigenous leaders for the need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacity in order to meet the challenges faced by their communities and, in this connection, notes the importance of restoring or building strong and healthy relationships within families and communities.

16. The Special Rapporteur also notes a need to move deliberately to adopt genuine reconciliation measures, such as the proposed recognition of the rights of Aboriginal and Torres Strait Islander peoples in a charter of rights, to be included in the Constitution. He is pleased that the Government has expressed its willingness in this regard, and urges it to provide a high priority to this initiative. As was stressed by the indigenous representatives with whom the Special Rapporteur met, constitutional recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples would provide a measure of long-term security for these rights, and be an important building block for reconciliation and a future of harmonious relations between indigenous and non-indigenous parts of Australian society.

17. Furthermore, it is important to note that securing the rights of indigenous peoples to their lands is of central importance to indigenous peoples' socio-economic development, self-determination and cultural integrity. Continued efforts to resolve, clarify and strengthen the protection of indigenous lands and resources should be made. In this regard, Government initiatives to address the housing needs of indigenous peoples should avoid imposing leasing or other arrangements that would undermine indigenous peoples' control over their lands. The Special Rapporteur urges the Government to comply with the recommendations concerning indigenous lands and resources made by the treaty-monitoring bodies of the United Nations, including the recommendation of the Committee on the Elimination of Racial Discrimination, to advance in discussions with Aboriginal and Torres Strait Islanders on possible amendments to the Native Title Act and find solutions acceptable to all.

18. Finally, the Special Rapporteur reiterates the importance of the Declaration on the Rights of Indigenous Peoples in the framing and evaluation of legislation, policies and actions that affect the Aboriginal and Torres Strait Islander peoples. The Declaration expresses the global consensus on the rights of indigenous peoples and corresponding State obligations on the basis of universal human rights. The Special Rapporteur recommends that the Government undertake a comprehensive review of all its legislation, policies and programmes affecting Aboriginal and Torres Strait Islanders in the light of the Declaration.

## Bolivia

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Bolivia from 25 November to 7 December 2007. Please refer to document A/HRC//11/11

### Conclusions and recommendations (A/HRC/11/11, para.74 - 105)

74. The cultural and social identity of the indigenous peoples of Bolivia, which for so long was denied and repressed, is rapidly being transformed through processes of social mobilization, political participation and economic change, in which the indigenous peoples themselves have become key actors.

75. Since coming to power in 2005, the Government has initiated profound political, legal and institutional reforms with the aim of reversing the situation of exclusion and marginalization of the predominantly indigenous population in the context of a new State model. Some of these reforms have met with opposition from some social, political and economic sectors, particularly in the eastern departments, leading to the state of crisis in which the country currently finds itself. The confrontation between these sectors and the central Government has its roots in historical models of differentiation between the various regions and peoples of Bolivia. This has created a very disturbing rise in racism, including physical and verbal assaults against indigenous leaders and human rights defenders.

76. The draft new Constitution approved by the Constituent Assembly in December 2007 reflects the intention to redefine the relationship between the State and the indigenous peoples based on the premise of the multicultural and plurinational nature of Bolivian society. The recognition of the rights of the indigenous peoples in the draft text takes full account of the provisions of ILO Convention No. 169 and of the United Nations Declaration on the Rights of Indigenous Peoples, which have already been incorporated into domestic law, as well as other international norms on the subject.

77. The main challenges to the enjoyment of the rights of the indigenous peoples in Bolivia are access to land and recognition of their traditional territories, in both the Andean region, which is characterized by the scarcity and fragmentation of indigenous land ownership, and the low-lying Amazonian, Chaco and eastern regions, where indigenous territories are threatened by the powerful interests of the farming and forestry industries. The lack of access to land and territory perpetuates low levels of human development, social exclusion and other phenomena affecting the majority of indigenous communities.

78. The environmental pollution of many indigenous territories as a consequence of mining operations, especially in Oruro and Potosí, and of hydrocarbon production in the Chaco and Amazonian regions, has not been subject to effective environmental control by the competent authorities, nor has it given rise to the proper consultation procedures to which the indigenous peoples are entitled. Instead, it has posed serious problems to the health and traditional economic activities of the indigenous communities. Despite the many complaints submitted to this effect, there is a reported failure to provide redress and compensation by those responsible for the polluting activities.

79. Urgent attention must be given to eliminating persistent servitude and forced labour and the holding captive of some indigenous communities in the country, which are vestiges of historic practices of landowner domination, as in the case of the Guaraní people in the Chaco. By way of a solution, the Government is proceeding to the reversion of properties where such conditions exist and to the restoration of the lands to their legitimate indigenous owners.

80. The gradual encroachment on lowland indigenous territories as a result of the extension of agribusiness, the exploitation of natural resources and an influx of settlers from other regions of the country has left some indigenous peoples in a particularly vulnerable position. The Yuqui and Ayoreo, and other peoples with whom contact has been established only recently or who live in isolation, are experiencing a major social and cultural upheaval and are frequently the victims of discrimination in their dealings with other social sectors.

81. Bolivia is currently faced with the challenge of building a pluralistic, intercultural, participatory, inclusive and democratic society. All sectors of the country - indigenous and non-indigenous - now have the opportunity and the responsibility to contribute to this historic process without resentment or hatred. If

this is achieved in a peaceful and tolerant manner and with a spirit of solidarity and mutual comprehension, all Bolivians will gain from it.

## VII. RECOMMENDATIONS

### A. Legislation and institutional structure

82. The Special Rapporteur recommends that the National Congress of Bolivia should carry out the legislative reforms needed to regulate the exercise of indigenous peoples' rights as recognized in the draft new Constitution and in the United Nations Declaration on the Rights of Indigenous Peoples, which has the status of domestic law. Priority should be given to the regulation of indigenous autonomy and administration of justice, as well as to the harmonization of sectoral legislation with indigenous peoples' rights.

83. With regard to the exercise of indigenous self-determination and autonomy, the State authorities must take indigenous peoples' traditional structures of government and territorial organization into account when formulating and implementing public policy. The State might give consideration to redefining political and administrative divisions at the local and regional levels in order to facilitate efforts to reconstitute indigenous territories and forms of government.

84. The Special Rapporteur recommends, in particular, that departmental and local authorities should develop their own public policies relating to the indigenous peoples, in consultation with the authorities and organizations representing the peoples concerned and in strict adherence to the criteria set forth in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

85. The Special Rapporteur recommends expediting training for Bolivian public authorities and officials, especially judges, magistrates and other agents of justice, in the legal norms relating to indigenous peoples' rights.

86. Steps should be taken to strengthen the institutional structure and activities of the Indigenous Rights Mainstreaming Unit and the Community-Based Policy Department of the Ministry of the Presidency with a view to effectively coordinating public policy in areas of direct concern to the indigenous peoples, including the implementation of the recommendations included in the present report and the decisions and recommendations of other human rights bodies and mechanisms.

### B. Lands, territories and natural resources

87. The Special Rapporteur recommends that special priority should be accorded to the agrarian land regularization process under the new Community-Based Agrarian Reform Renewal Act (No. 3545), paying particular attention to the titling of the indigenous TCOs, in both the lowlands and the highlands. To that end, the Government should provide the relevant institutions with the human and financial resources needed, drawing on international cooperation where possible.

88. Particular attention should be given to implementing the regulations concerning consultation and preparation of environmental impact studies in relation to the exploration and exploitation of natural resources in indigenous lands and territories. The relevant authorities should ensure that new contracts with private companies guarantee respect for indigenous rights in accordance with the new legislation in force.

89. Enterprises operating in Bolivia should draw up and implement clear and precise guidelines for their operations to exploit natural resources in indigenous territories, including indigenous peoples' right to participation and consultation, taking into account existing legislation and the international norms and standards established by the international financial institutions in relation to indigenous peoples.

90. The relevant authorities should, as a matter of urgency, carry out a general study on the pollution of the indigenous territories in the country and, in consultation with the communities affected, implement such measures of inspection, relief, redress, compensation, prevention and punishment as may be necessary.

91. The Special Rapporteur recommends that the competent authorities of Bolivia and Brazil should, in a spirit of open cooperation, take all necessary measures to ensure consultation with the indigenous communities that will be affected by the hydrology projects along the Madeira River on both sides of the border in order to avoid any unnecessary infringement of their rights as a result of such projects.

### **C. Racial discrimination**

92. The Special Rapporteur makes a special appeal to public authorities at all levels and to political parties, indigenous organizations, civic organizations, the media, academic institutions and other political and social sectors, to refrain from any manifestation of discrimination towards persons and groups on the basis of their indigenous origin and to launch a sincere and wide-ranging debate in Bolivian society with the aim of enhancing mutual understanding and interaction between the various communities and nations of the country.

93. The Special Rapporteur recommends that the authorities should strengthen their policies to combat all forms of discrimination. As part of these policies, the Government might implement a national plan to combat racism, racial discrimination and xenophobia, following the principles of the Durban Declaration and Programme of Action.

94. It is recommended that the Government should promote efforts to define racial discrimination as a punishable offence in Bolivia's domestic law, as well as adopt specific legislation to combat discrimination in all spheres.

95. The Special Rapporteur suggests that the Government should encourage reflection on the responsibility of the public or private media in combating racism and racial discrimination. The various media should adopt a code of conduct prohibiting all forms of discrimination.

96. The Special Rapporteur suggests that the Government of Bolivia should consider the possibility of inviting the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to carry out an official visit to the country.

### **D. Particularly vulnerable groups**

97. The Special Rapporteur recommends that the Government should, as a matter of priority, strengthen measures for the suppression of all forms of servitude and forced labour in the country, with the technical assistance of ILO and other relevant agencies and organizations.

98. The Special Rapporteur recommends that the Government should strengthen intersectoral efforts to support the Yuqui people and other peoples in a highly vulnerable situation, with a view to the development of coordinated and systematic action to safeguard the rights of these peoples, with particular emphasis on the areas of health and territorial protection.

### **E. The situation of human rights defenders**

99. The Special Rapporteur recommends that attacks against leaders of indigenous organizations and human rights defenders should continue to be investigated and punished, and that the police should afford the necessary protection to such persons in the event of threats or attacks against them. In particular, he recommends that an exhaustive investigation should be conducted into the possible responsibility of the public authorities for such attacks, and that appropriate disciplinary measures should be taken.

### **F. International cooperation**

100. The Special Rapporteur makes a special appeal for dialogue and cooperation to be promoted between the Government, United Nations agencies and bodies, and bilateral and multilateral donors working in areas of particular interest to the indigenous peoples, and, in consultation with indigenous organizations, for use to be made of existing possibilities for international cooperation in this area.

101. It is recommended that the Government should give consideration to obtaining technical cooperation from the Office of the United Nations High Commissioner for Human Rights (OHCHR), ILO and other appropriate organizations and agencies in formulating and implementing new legislation and public policies of particular relevance to the human rights of the indigenous peoples.

102. It is recommended that OHCHR should place particular emphasis on the promotion of efforts to give effect to the United Nations Declaration on the Rights of Indigenous Peoples in cooperation with the Bolivian authorities, indigenous organizations and other relevant actors.

103. It is recommended to the United Nations country team that efforts should be made to continue and strengthen the activities of the National Council for Dialogue among Indigenous, Native, Peasant Peoples



and the United Nations System, with the participation of the representatives of the various agencies, funds and organizations comprising the United Nations country team.

104. It is recommended to the Partners for Bolivia Group (GRUS) that efforts should be made to continue and strengthen the activities of the Sectoral Group for Indigenous Peoples' Rights, in coordination with the indigenous organizations and the relevant government institutions.

#### **G. Academic centres**

105. The Special Rapporteur recommends that universities and academic institutions should pay particular attention to and bring their curricula into line with the principles of multiculturalism and the promotion of the rights of indigenous peoples, together with the development of intercultural attitudes, practices and institutions. In no circumstances should universities accept or promote expressions of racial discrimination, and academic authorities should encourage the adoption of codes of conduct along these lines.

## Botswana

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Botswana from 19 to 28 March 2009. The preliminary note (please refer to document A/HRC/12/34/Add.4) did not provide detailed conclusions and recommendations. Excerpts provided below are some of the issues that the preliminary note highlights.

### Preliminary observations (A/HRC/12/34/Add.4, para.8-12)

8. While the Special Rapporteur acknowledges the important advances that Botswana has made, he must also take into account the repeated statements of discontent he heard among all the communities visited (predominantly Basarwa and Bakgalagadi indigenous communities), including in relation to the fulfillment of rights associated with access to health and education services, land and resources, and the decision-making processes affecting them. Despite the positive efforts made by the Government, the Special Rapporteur heard that the language, culture and heritage of the indigenous groups are often not adequately taken into account in the design and implementation of the Government development initiatives affecting them, and that they are not adequately consulted, with the result that the ultimate success of the Government's initiatives is impeded.

9. An issue of particular concern is the relocation of indigenous groups from the Central Kalahari Game Reserve, which the Government has promoted pursuant to its development and conservation plans. In the settlements of Kaudwane and New Xade outside the game reserve, several Basarwa community members who had been resettled there from the reserve complained of their relocation; in the communities of Gugamma and Metsiamanong, located inside the game reserve, individuals who have remained or managed to return there expressed concern at the lack of access to services, including water. The renowned Tsodillo Hills heritage site is another place from which indigenous people have been relocated. The Special Rapporteur visited the site and a community that had been relocated from it, and heard from community members, who expressed a range of concerns related to their relocation.

10. The Special Rapporteur understands that the Government has a different perspective on the above-mentioned relocations and other issues raised by members of indigenous communities; nonetheless, he is concerned by these issues and is endeavouring to address them in a constructive manner consistent with his mandate.

11. The Special Rapporteur understands that he was able to visit only a small fraction of the many communities of Basarwa and other non-dominant tribes in Botswana. Nonetheless, he was struck by the apparent sincerity and consistency of the accounts of discontent he heard, and by the fact that these accounts are reinforced by the information and analysis provided by respected non-governmental actors in Botswana and other credible sources, including those associated with international institutions, such as the African Commission on Human and Peoples' Rights.

12. The Special Rapporteur believes that the concerns expressed to him during his visit are associated with three underlying, interrelated issues: (a) respect for cultural diversity and identity; (b) consultation and political participation; and (c) redress for historical wrongs. The Special Rapporteur is evaluating these underlying issues in connection with an ongoing exchange of information, and will address them and provide recommendations thereon in his final report, with a view to developing potential solutions to meet these challenges.

## Brazil

### Introduction

During 2010 two mandate holders visited the country. The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Brazil from 4 to 14 November 2007 (please refer to document A/HRC/11/2/Add.2). The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Brazil from 18 to 25 August 2008 (please refer to document A/HRC/12/34/Add.2).

Conclusions and recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2/Add.2, para.76-99)

76. The Brazilian Government has, in the past, been very responsive to the recommendations offered by special rapporteurs. It is to be hoped that the following recommendations are seen as constructive and feasible.

#### *A. Policing strategies*

77. State Governors, Secretaries for Public Security, and Police Chiefs and Commanders should take the lead to make publicly clear that there will be zero tolerance for the use of excessive force and the execution of suspected criminals by police.

78. The State Government of Rio de Janeiro should eschew large-scale, or “mega”, operations in favour of systematic and planned progress in reasserting a sustained police presence and government authority in gang-controlled areas. Present policies are killing large numbers of people, alienating those whose support is needed for potential success, wasting precious resources, and failing to achieve the stated objectives. Designing policing strategies solely with electoral objectives in mind does a disservice to the police, the communities affected, and society at large.

79. The use of armoured vehicles should be monitored by equipping them with audio and visual recording equipment. The results should be regularly monitored in cooperation with community groups.

80. In the longer term the Government should work towards abolishing the separate system of military police.

81. The federal Government should implement more effective measures to tie state funding to compliance with measures aimed at reducing the incidence of extrajudicial executions by police.

#### *B. Police involvement in organized crime*

82. In each State, the State Secretariat for Public Security should establish a reliable specialized unit to investigate and prosecute police involvement in militias and extermination groups.

83. Off-duty police should under no circumstances be permitted to work for private security firms. To facilitate such changes:

- (a) Police should be paid significantly higher salaries;
- (b) The shift structure of police work should be reformed so that police cannot regularly work for large blocks of time and then receive multiple days off.

#### *C. Police accountability*

84. Systems for tracking the use of firearms should be established in all states, and where some procedures already exist, they must be improved, and the Government must ensure they are followed. The weapon and the quantity of ammunition provided to each policeman should be recorded, and every bullet should regularly be accounted for. Every instance in which a policeman fires his or her weapon should be investigated by internal affairs and recorded in a database. This database should be accessible by police

Ombudsman Offices and used by police chiefs and commanders to identify police in need of closer supervision.

85. The current practice of classifying police killings as “acts of resistance” or “resistance followed by death” provides a *carte blanche* for police killing and must be abolished. Without prejudicing the outcome of criminal trials, such killings should be included in each state’s homicide statistics.

86. The federal Secretariat for Human Rights should keep a detailed database of human rights violations by police.

87. The integrity of work by the internal affairs services of the police should be ensured by:

- (a) Establishing a separate career path for those working in internal affairs;
- (b) Establishing clear procedures and time limits for investigations;
- (c) Making all information regarding investigations and recommended disciplinary sanctions freely accessible to Ombudsman Offices.

88. In cases involving police killings and other allegations of serious abuse, internal affairs services should publicly provide information on the status of individual cases, including the measures recommended to police chiefs and commanders.

89. Police under investigation for crimes constituting extrajudicial executions should be removed from active duty.

90. Offices of police Ombudsman, as they exist in most states, should be reformed so as to be better able to provide external oversight:

- (a) They should report directly to the state governor rather than to the state secretary of public security;
- (b) They should be provided with the resources and legal powers necessary to reduce dependence on information from the internal affairs services of the police forces;
- (c) They should issue regular public reports providing accessible information on patterns of police abuse and on the effectiveness of disciplinary and criminal proceedings. This information should be compiled so as to enable meaningful comparisons across time and geographical areas;
- (d) In order for them to provide more reliable information on the strengths and weaknesses of existing policing strategies in terms of both respecting and protecting rights, they should be provided resources to conduct or commission surveys on citizen experiences with crime and the police.

#### *D. Forensic evidence*

91. The routine failure of police to preserve crime scenes must end; should problems persist, the Public Prosecutor’s Office should use its authority to exercise external control of the police so as to ensure the integrity of its prosecutions.

92. Hospitals should be required to report to police precincts and police internal affairs all cases where the police bring a deceased criminal suspect to hospital.

93. State Institutes of Forensic Medicine should be made fully independent from public security secretariats, and expert staff should receive employment guarantees that ensure the impartiality of their investigations. Additional resources and technical training should also be provided.

#### *E. Witness protection*

94. In many respects, the existing witness protection programs constitute a model, but reforms are also needed:

- (a) State governments should provide adequate, timely, and reliable funding;
- (b) State governments should ensure that police cooperate in escorting witnesses to court appearances in a safe and non-threatening manner;

(c) The federal government should conduct a study on whether there are ways to protect witnesses who are unwilling to comply with the current programs' strict requirements, and on whether the use of NGOs as implementing partners should be phased out or restructured.

#### *F. Public prosecutors*

95. The involvement of the Public Prosecutor's Office in building criminal cases must be strengthened:

(a) State governments should ensure that Civil Police notify public prosecutors at the onset of their investigations so that prosecutors can provide timely guidance on what evidence must be gathered in order to obtain a conviction;

(b) The legal authority of public prosecutors to independently gather evidence admissible in court should be unequivocally affirmed;

(c) Public prosecutors should routinely conduct their own investigations into the lawfulness of killings by the police.

#### *G. Judiciary and legal framework*

96. The period of prescription (statutory period of limitation) for intentional crimes against life should be abolished.

97. Recognizing that permitting persons convicted of murder by a trial court to remain free while their appeal is ongoing facilitates the intimidation of witnesses and fosters a sense of impunity, judges should give careful consideration to alternative interpretations of the norm guaranteeing the "presumption of innocence" found in foreign and international jurisprudence.

98. The National Council of Justice and other appropriate bodies should take measures to ensure that:

(a) In making docket management decisions, judges do not put off dealing with cases involving killings by powerful actors, including the police, or prioritize civil above criminal cases;

(b) Judges of penal execution conduct prison inspections pursuant to a written protocol which requires private interviews with prisoners randomly selected by the judge.

#### *H. Prisons*

99. While avoiding steps that would further endanger inmates, the government should take steps to end gang-control of prisons, including:

(a) All practices that encourage or require new prison inmates to choose a gang affiliation should be discontinued. Inmates should be able to identify as "neutral" and be placed in truly neutral prisons;

(b) Mobile phones should be eliminated from prisons through the more rigorous use of metal detectors and through the installation of technology that blocks mobile phone signals;

(c) Prison authorities should reassert day-to-day control of internal prison administration so that prison guards, not inmates, are responsible for internal discipline;

(d) All inmates' benefits and location in the prison system should be recorded electronically, and prisoners moved from one type of detention to another when they are so entitled. Inmates and judges of penal execution should be able to access the digital record of prisoner entitlements;

(e) Overcrowding should be reduced through more use of alternative sentences, open prison regimes, and the construction of new prisons.

100. The Government should ensure that this report is disseminated widely to officials at all levels. The federal Secretariat for Human Rights should take responsibility for monitoring the progress of the implementation of these recommendations.

### **Conclusions and recommendations** of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34/Add.2, para.77-99)

77. In partnership with indigenous peoples, and with the support of the United Nations, the Government should develop and implement a national campaign of education on indigenous issues and

respect for diversity, highlighting ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples and the Government's commitment to these instruments. This campaign should target and seek to involve policymakers at all levels, the general public, educational institutions and the news media.

#### *Self-determination*

78. Every effort should be made to enhance the control of indigenous peoples over their communities, territories and natural resources, including providing effective recognition of indigenous peoples' own institutions of authority and customary laws, to the extent compatible with universal human rights standards.

79. Relevant Government agencies should, to the extent possible, facilitate greater decision-making power by indigenous peoples over the delivery of Government services in their communities, and assist them to develop the capacity to effectively exercise that power.

80. National Indian Foundation's (FUNAI) programmes should all have a specific orientation to support and build capacity for the exercise of indigenous self-determination and, to that end, should continue to increase indigenous representation within its own leadership and technical staff.

81. All efforts should be made to enhance indigenous peoples' representation in legislative, executive and judicial institutions at the local, state and federal levels, and indigenous peoples should be accorded the juridical personality necessary for them to act on their own in public proceedings and to enforce their collective rights.

82. The Government should ensure adequate consultations with indigenous peoples in regard to all legislative or administrative decisions affecting them, in accordance with applicable international standards. To this end a law or other appropriate mechanism should be developed to define a procedure for consulting with indigenous peoples. This procedure should itself be developed in consultation with indigenous peoples and should apply, inter alia, in regard to the development projects and natural resource extraction activities having direct impacts on indigenous peoples, including such activities that are within or outside of demarcated indigenous lands.

#### *Demarcation and protection of lands*

83. FUNAI should be ensured adequate funding and staff to proceed effectively with the process of demarcating and registering indigenous lands, in accordance with the applicable laws, regulations and international standards.

84. Measures should be taken to improve the mediation capacity of FUNAI and other relevant governmental institutions to deal with conflicting interests in relation to indigenous land and resources, and to work with state and local governments to implement such mechanisms and ensure protection from discrimination and equal opportunities to indigenous peoples in this regard.

85. In exercising whatever powers they have with regard to indigenous lands, all public institutions and authorities, at both the federal and state levels, should be aware of and conform their conduct to the relevant provisions of Convention 169 and other applicable international instruments which provide protection of indigenous peoples' rights to lands and natural resources, and these protections should be strengthened by domestic legislation.

#### *Health*

86. The Ministry of Health, in consultation with FUNAI and indigenous peoples, should continue efforts to improve the delivery of health services to indigenous peoples, especially in remote areas, with attention to the special health needs of indigenous women and children. Every effort should be employed to enhance indigenous peoples' participation in the formation of health policy and delivery of services, including with a view to better incorporating traditional indigenous health practices. All medical

professionals should be provided with comprehensive medical training that includes traditional methods employed and that is provided in the language of the community.

#### *Education*

87. Further efforts should be made by FUNAI, the Ministry of Education, state and municipal educational authorities and local partners to improve the quality and availability of education to indigenous children and youth, including through the incorporation of indigenous systems of teaching, cross-cultural curriculums and bilingual programming into the education of indigenous children and youth, and to strengthen the participation of indigenous communities and their authorities in educational programming. Adequate and transparent funding for teachers, materials and infrastructure for indigenous education should be secured.

88. Affirmative action programmes for facilitating access by indigenous people to higher education should be strengthened in universities across the country.

89. Opportunities for skills training that would enhance the capacity of indigenous individuals and communities to be self-sufficient and to manage their own affairs should be developed and extended widely to indigenous peoples.

#### *Security enforcement*

90. Federal, state and local authorities are urged to take further, coordinated measures to secure the safety of indigenous individuals and communities and the protection of their lands, in consultation with them, especially in areas with a high incidence of violence. Authorities should ensure that persons who have committed crimes against indigenous individuals are swiftly brought to justice.

91. Measures should be taken to ensure that police and military personnel operating in indigenous areas are adequately trained and do not discriminate against indigenous peoples, and that they are disciplined for inappropriate or illegal action against indigenous peoples.

92. Law enforcement authorities should take care to avoid prosecuting indigenous individuals for alleged criminal activity when that activity is in fact part of a legitimate act of protest, for example, for the recovery of land, and any pending prosecutions for acts that were or are related to acts of protest should be reviewed.

#### *Law and policy reform*

93. In consultation with indigenous peoples, new legislation should be adopted and existing laws reformed as necessary to implement ILO Convention 169, in light of the United Nations Declaration, and to generally harmonize Brazil's laws and policies with the principles and objectives of the Convention.

94. All Government economic and infrastructure development initiatives that may affect indigenous peoples should be reviewed and reformed as necessary to ensure that they are consistent with Convention 169 and the Declaration.

95. The Bolsa Família programme should be reviewed and reformed as necessary to ensure that its benefits extend equitably and effectively to indigenous peoples.  
To the United Nations Country Team (UNCT):

96. UNCT in Brazil should consider employing an indigenous peoples' rights focal point, if not a team, in order to better incorporate the specific needs of indigenous peoples into its programming. This should be done with priority given to including indigenous staff in UNCT.

97. UNCT should consider strengthening its relationship with FUNAI, potentially through initiatives that include, but are not limited to, collaboration on projects and training programmes with a human rights-based approach to development for indigenous peoples.

To indigenous peoples and their organizations:

98. Indigenous peoples and their organizations should consider devoting efforts to working with educational institutions and civil society organizations to develop strategies to engage political actors, the news media, the business community and others, with a view to raising awareness on indigenous issues and improving or strengthening relations with non-indigenous sectors.

99. Indigenous peoples should endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with Government authorities and NGOs with which they choose to work.



## Cambodia

### Introduction

During the period under review, the Special Rapporteur for human rights in Cambodia visited Cambodia from 16 to 26 June 2009 (please refer to document A/HRC/12/40).

### **Conclusions** (A/HRC/12/40, para.25-26)

25. In conclusion, I believe that the promotion and protection of human rights in Cambodia depends on making real and substantial progress in strengthening the rule of law, creating a clearer separation of power between the three main branches of the Government, protecting the independence of the judiciary, including that of the Extraordinary Chambers in the Courts of Cambodia, and addressing issues such as conflicts over land, impunity and control of corruption. I intend to focus my attention on these substantive issues during my future visits to the country and hope that the Government will be willing to engage in a constructive dialogue on these issues.

26. I was pleased with the opportunity that I had during my visit to outline my intention to engage in a constructive dialogue with the Royal Government of Cambodia and to offer my assistance in dealing with some of the human rights challenges facing the nation. I would be willing to act as a bridge between the Government and the civil society in order to foster an environment of cooperation rather than confrontation between them for the benefit of the people of Cambodia. I would also be willing to assist the Government in promoting a greater degree of clarity in the separation of power between the three main branches of the Government, in enhancing the independence of the judiciary, and in developing transparent national guidelines on land evictions.

## Canada

### Introduction

During the period under review, the Special Rapporteur on adequate housing visited Canada from 9 to 22 October 2007 (please refer to document A/HRC/10/7/Add.3).

### Conclusions and recommendations (A/HRC/10/7/Add.3, para.88-111)

88. The Special Rapporteur believes that the legal recognition of the right to adequate housing is an essential first step for any State to implement the human rights to adequate housing of the people under its protection. Therefore, the Special Rapporteur strongly recommends that the right to adequate housing be recognized in federal and provincial legislations as an inherent part of the Canadian legal system.

89. In line with previous recommendations made by the Committee on Economic Social and Cultural Rights (CESCR), the Special Rapporteur recommends that human rights legislation in all Canadian jurisdictions be amended to fully include economic, social and cultural rights and that they be included in the mandates of all human rights bodies.

90. The Special Rapporteur calls for Canada to adopt a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable. This national strategy should include measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms.

91. The Special Rapporteur also supports the recommendation of the CESCR that homelessness and inadequate housing in Canada be addressed by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities”.<sup>2</sup>

92. In order to design efficient policies and programmes, federal, provincial and territorial authorities should work in close collaboration and coordination and they should commit stable and long-term funding to a comprehensive national housing strategy. Federal, provincial and territorial authorities should also collaborate with authorities that are the closest to the need of the population such as municipal authorities, service providers and civil society organizations.

93. The authorities should take advantage of the outstanding level of academic analysis of right to housing issues available in Canada to implement the detailed recommendations contained in the Ontario Human Rights Commission report.

94. The definition of “core housing need” should be revised to include all the elements of the right to adequate housing and the federal government should collect reliable statistical data on all such dimensions.

95. The federal government, along with the provinces and territories, should commit the necessary funding and resources to ensure access to potable water and proper sanitation. This is a particularly acute issue for Aboriginal people, both on-reserve and off-reserve, and Aboriginal people should be directly involved in the design, development and operation of appropriate water systems.

96. Canada should adopt a national strategy on affordable housing that engages all levels of government including Aboriginal governments, Aboriginal people, civil society and the private sector. The strategy will require permanent and adequate funding and legislation set within a rights-based framework.

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<sup>2</sup> CESCR, Concluding observations, 22 May 2006, E/C.12/CAN/CO/4 - E/C.12/CAN/CO/5, Paragraph 62. Many information on homelessness and poverty can be found at: <http://intraspec.ca/homelessCanada.php>.

97. Canada may need to embark again on large scale building of social housing. It should also consider providing subsidies including housing allowances or access to other cost-effective ways in order for low-income households to meet their housing needs.
98. The Federal Government should work with the provinces and territories to ensure there is a consistent framework of tenant protection law that meets the standards required by human rights obligations.
99. Discriminatory practices in housing should be addressed by ensuring that victims have access to legal representation and, where a quick settlement is not reached, prompt access to hearings and remedies. Systemic and widespread discrimination should be investigated by human rights commissions and legal and practical solution implemented. Specific funding should be directed to groups particularly vulnerable to discrimination including women, Aboriginal people, the elderly, people with mental or physical disabilities, youth and migrants, to ensure they can challenge housing discrimination effectively.
100. The Special Rapporteur urges the federal authorities to adopt an official definition of homelessness and to gather reliable statistics in order to develop a coherent and concerted approach to this issue.<sup>3</sup> This should be fully inclusive of women's, youth and children's experiences of and responses to homelessness.
101. Canada should adopt a coordinated national strategy for reduction of homelessness that links the short-term measures (such as supports and temporary shelter for the homeless) with longer-term measures (to ensure the availability of permanent, affordable housing, along with income and employment supports).
102. Reducing homelessness and the number of people living in inadequate housing requires Canada to adopt a comprehensive and coordinated national poverty reduction strategy. Whilst three provinces have already taken important steps in this direction, the federal government should also be active in this area. This must include a review of the income available through social assistance and minimum wage in light of actual housing costs and a timetable for ensuring an adequate income to cover housing costs.
103. In view of the issues faced by women in regard to discrimination and inadequate living conditions as well as income disparity between men and women, the Special Rapporteur recommends that the mandate and funding of the Status of Women Canada (SWC) be fully reinstated including funding for advocacy for women's equality.
104. Sufficient income and housing assistance should be ensured to allow mothers to secure adequate housing and maintain custody of their children.
105. Federal and provincial governments should develop a comprehensive and coordinated housing strategy based on a human rights approach, in collaboration with Aboriginal governments and communities, to address effectively their responsibility to ensure adequate housing for on and off reserve Aboriginals.
106. In reserves, there is a need to commit funding and resources to a targeted Aboriginal housing strategy that ensures Aboriginal housing and services under Aboriginal control.
107. Authorities should genuinely engage with Aboriginal communities to resolve as soon as possible land claims such as in the Lubicon region so that housing problems can be resolved on a longer-term basis. In the mean-time urgent steps should be taken to improve housing and living conditions regardless of the status of the land claims. Until a settlement is reached no actions that could contravene the rights of Aboriginal peoples over these territories should be taken. In that regard, a moratorium should be placed on all oil and extractive activities in the Lubicon region until a settlement. Moreover, activities of private companies on Aboriginal lands - regardless of the status of the claim - should be carried out only with consultation and approval of all Aboriginal and concerned communities. The Special Rapporteur reaffirms

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<sup>3</sup> Mission to Australia, A/HRC/4/18/Add.2, para. 38-40.

the importance of accountability of private actors and calls for respect for human rights in their activities, policies and projects.

108. Federal, Provincial, Aboriginal and municipal governments should undertake gender-based analysis of Aboriginal housing concerns that is culturally relevant and developed with the participation of Aboriginal women.

109. Aboriginal women must have effective participation in decision-making - at all levels, and Aboriginal women with disabilities. For example, equitable representation of all Aboriginal women in modern day treaty negotiations and agreements could ensure that shelter and housing needs of Aboriginal women are adequately considered.

110. Implementation of matrimonial real property legislation aimed at addressing current inequalities faced by Aboriginal women living on reserves should be complemented by effective concomitant non-legislative changes such as access to justice initiatives.

111. Vancouver Olympic officials, and other authorities, need to implement specific strategies on housing and homelessness that do not rely on criminalization of poverty, and to commit funding and resources to support their targets, including the construction of 3,200 affordable homes as set out by the City of Vancouver as its minimum requirement for social sustainability and echoed in community Olympic consultation processes. The social development plan should be designed and implemented with public participation, and progress should be independently monitored.

## Central African Republic

### Introduction

During the period under review, the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Central African Republic from 31 January to 7 February 2008 (please refer to document A/HRC/11/2/Add.3).

### Conclusions and recommendations (A/HRC/11/2/Add.3, para.87)

87. The Special Rapporteur considers the following to be the essential measures that should be implemented to reduce extrajudicial executions, and to provide for accountability when they occur.

#### ACKNOWLEDGE, INVESTIGATE, AND PROSECUTE SERIOUS HUMAN RIGHTS ABUSES

- Impunity should not be allowed to prevail for recent abuses in the north:
  - (a) The Government should effectively investigate the allegations of human rights abuses that have been made regarding the conduct of its security forces and provide a detailed public response, acknowledging abuses and identifying errors;
  - (b) All members of the security forces implicated in abuses should be suspended from duty, investigated and prosecuted. The Government should begin the effort to end impunity by investigating Lt. Eugène Ngaïkossé and his unit.
- The Government and the international community should continue to support the important work of the International Criminal Court in the Central African Republic.
- If the Government fails to take the steps listed above, the Prosecutor of the International Criminal Court should expand the existing investigation to take account of relevant crimes alleged to have been committed.
- Reforms should be implemented in the criminal and military justice systems to promote accountability over the long-term:
  - (a) The reforms proposed by the Government to, inter alia, improve court infrastructure, recruit more magistrates and clerks, and revise magistrate training should be welcomed and supported by the international community;
  - (b) The role of gendarmes in gathering information and reporting on abuses by the military units which they accompany should be clarified and strengthened. Gendarmes should receive training in human rights and humanitarian law directed at ensuring that they investigate, report on, and arrest perpetrators of abuses;
  - (c) Prosecutors and investigative judges should recognize their obligation to take on cases in which the security forces are implicated in serious abuses of human rights and humanitarian law, and treat such cases as a priority;
  - (d) The Criminal Code should be amended so that genocide, crimes against humanity, war crimes, and other offences under the Rome Statute are criminalized in domestic legislation;
  - (e) The Permanent Military Tribunal should be provided with sufficient resources to hold regular sessions;
  - (f) There should be transparency regarding the investigation, prosecution and punishment of members of the security forces. The security forces should maintain records and regularly issue reports on allegations of abuse by soldiers and on the numbers of soldiers disciplined and referred for prosecution. Similarly, the Permanent Military Tribunal and administrators of the ordinary judicial system should regularly report on the status of cases against security force members.

#### REFORM THE MILITARY TO EFFECTIVELY PROTECT AND RESPECT HUMAN RIGHTS

- The Government's proposed reforms to increase the resources and capability of the security forces should continue to be supported by the international community and be pursued in a manner that develops their capacity to both respect and protect human rights.
- The general instructions given by the President to end killings and other abuses against the civilian population should be specifically reflected in internal regulations, orders, training and other practices so as to prevent abuses from recurring in the future.
- Training in human rights and humanitarian law should be provided to all members of the security forces and regularly reinforced. The President and senior commanders should further support respect for these bodies of law by issuing clear instructions:
  - (a) Soldiers should be instructed that they must obey international human rights and humanitarian law and that they have the obligation to disobey manifestly illegal orders and will otherwise be prosecuted;
  - (b) Commanders should be instructed that they are criminally responsible when they knew or had reason to know that their subordinates were going to commit crimes and did not take all reasonable and necessary measures to prevent and punish those crimes.
- The *Forces Armées Centrafricaines* (FACA) should be reformed so that it is seen to be an apolitical institution working on behalf of the people rather than of any single individual or regime. Relevant reforms would include:
  - (a) Recruitment and promotion processes should be regularized and based on merit and the development of a force representative of the society as a whole;
  - (b) A regular chain-of-command should be established and enforced;
  - (c) No military operation should be carried out except pursuant to a written order signed by the legally designated commander. Reports of irregular operations should be investigated, and those involved disciplined and prosecuted;
  - (d) The FACA and other security forces should consult closely with local populations in the north in need of protection to reduce fears that the military will engage in abuses and to guide operations responding to banditry and cross-border raids;
  - (e) The FACA should be transformed into a truly country-wide force with soldiers based in key centres throughout the country.
- A process should be embarked upon to permanently abolish the institution of a Presidential Guard - whatever it might be formally named - that plays any role other than providing close protection for the President:
  - (a) Donors should link assistance for reforms that increase the effectiveness and reliability of the military to steps taken to reduce the size and role of the Presidential Guard;
  - (b) Civil society groups should promote a popular non-partisan understanding that new presidents must accept the existing security forces rather than supplementing them with presidential guards, militias or mercenaries, and that the security forces must support whoever is president.

#### ADDRESS DEATHS IN CUSTODY AND KILLINGS BY LAW ENFORCEMENT

- The practice in Bangui of prosecutors carrying out regular inspections of detention centres is a positive development, and should be implemented throughout the country. Reports of killings and other serious human rights abuses in detention centres should be fully investigated.
- The human rights training provided to police in Bangui should be extended to law enforcement officers throughout the country. Such training should in particular focus on the lawful use of force in law enforcement operations, and the proper treatment of detained suspects.

## END THE KILLING OF “WITCHES”

- The Criminal Code should be reformed to abolish the criminalization of “witchcraft”.
- Educational efforts should be made to bring an end to arbitrary and unjustified punitive measures against those accused of witchcraft. The killing of “witches” should be prosecuted like any other murder.
- All violations of the human rights of those accused of witchcraft should be investigated and prosecuted.

## IMPROVE INDEPENDENT HUMAN RIGHTS MONITORING

- The arrangements for international human rights monitoring and assistance at the time of the visit were deeply unsatisfactory. The Special Rapporteur recommended then that the Government and the Office of the High Commissioner for Human Rights engage in discussions aimed at the establishment of an OHCHR office in the Central African Republic. While this recommendation has subsequently been superseded by efforts to strengthen the OHCHR presence within BONUCA, it remains to be seen whether this formula is in fact viable. A detailed review of the effectiveness of the current mechanism should be undertaken when this recommendation is reviewed in the Special Rapporteur’s follow-up report on the Central African Republic.
- The Government should establish a national human rights commission that is independent and that fully complies with international standards, including the Paris Principles. Such a commission should be a priority for development assistance agencies.
- Local civil society organizations need to be strengthened. They play an indispensable role but are severely under-resourced and lack necessary technical expertise and facilities.

## PROMOTE ECONOMIC REFORM

The extractive industries are a potentially substantial source of revenue for the country. Among other measures to increase revenue so that necessary reforms can be implemented, the Government should:

- Take the necessary steps to join the Extractive Industries Transparencies Initiative
- With World Bank support, conduct an audit of the mining sector

## Chile

### **Introduction**

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Chile from 5 to 9 April 2009 (please refer to document A/HRC/12/34/Add.6). The full mission report is available in Spanish only.

### **Conclusions and recommendations** (A/HRC/12/34/Add.6, para.48-68)

48. El Relator Especial toma nota de los avances verificados en Chile hacia el reconocimiento de los derechos de los pueblos indígenas en Chile, tales como la ratificación del Convenio N° 169 de la OIT y las iniciativas de reforma constitucional en materia indígena. Resulta aparente que existe un nivel importante de atención de parte del Estado de Chile a los asuntos indígenas y el desarrollo de planes y propuestas orientadas a responder a las recomendaciones del anterior Relator Especial, profesor Stavenhagen, especialmente en materia de políticas asistenciales.

#### A. Consulta y participación

49. El Relator Especial insta a todas las partes interesadas a seguir fortaleciendo y hacer efectivos mecanismos de interlocución y concertación entre el Estado y los pueblos indígenas. En este sentido, el Relator Especial enfatiza al Estado la necesidad de crear condiciones de confianza y garantías entre las partes y desarrollar un procedimiento efectivo de consulta, de acuerdo a los estándares internacionales obligatorios para el Estado. Los pueblos indígenas del país deberían consolidar sus propias instituciones, mediante sus propios procedimientos de toma de decisiones, para facilitar los procesos de consulta y concertación.

50. Como medida de crear confianza en los procesos de consulta del Estado, el Relator Especial reitera su recomendación de llevar a cabo una consulta para determinar el procedimiento para implementar en Chile los estándares internacionales en las consultas propiamente dichas, antes de la adopción de cualquier medida que afecte directamente a los pueblos indígenas o a una comunidad indígena.

51. El Estado de Chile ha tomado pasos importantes hacia el reconocimiento constitucional de los pueblos indígenas y sus derechos. El Relator Especial insta al Gobierno y al Congreso Nacional a realizar el proceso de consulta en relación con estas reformas, y a asegurar que tanto la consulta como los contenidos de las reformas a adoptar sean plenamente conformes con las normas internacionales aplicables, incluido el Convenio N° 169 de la OIT y la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas.

52. El Relator Especial valora las iniciativas tendientes a fortalecer la participación de los pueblos indígenas en las estructuras del Estado y urge al Estado a asegurar su participación en condiciones de igualdad y tomando en cuenta sus formas tradicionales de organización, de acuerdo con las normas internacionales. Al respecto, el Relator Especial enfatiza la necesidad de preparar a los gobiernos regionales y ministerios para la aplicación plena del artículo 7 del Convenio N° 169 de la OIT, en particular respecto a la participación de los pueblos indígenas "en la formulación, aplicación y evaluación de los planes y programas de desarrollo nacional y regional susceptibles de afectarles directamente".

#### B. Derechos a tierras y territorios

53. El Relator Especial reconoce los esfuerzos del Estado en materia de políticas de tierras indígenas, desde la aprobación de la Ley N° 19253, y a la vez, en el nuevo marco legal reforzado con el Convenio N° 169 de la OIT, recomienda al Estado de Chile establecer un mecanismo efectivo para reconocer los derechos de los pueblos indígenas sobre tierras y recursos naturales que se basan en la ocupación y uso tradicional o ancestral, de acuerdo con las normas internacionales relevantes. A este respecto, el Relator Especial observa la necesidad de resolver los reclamos de tierra pendientes e insta al Gobierno y al



Congreso a asegurar que la Corporación Nacional de Desarrollo Indígena (CONADI) y otras instituciones relevantes cuenten con suficientes recursos para poder realizar adecuadamente sus funciones al respecto.

54. El Relator Especial enfatiza la necesidad de que el Estado desarrolle un máximo de esfuerzos en la adecuación de sus políticas públicas y de la legislación sectorial, de tierras, aguas, geotermia, y medio ambiente, entre otras, para su compatibilidad con el Convenio N° 169 de la OIT, y las obligaciones internacionales del Estado respecto a los derechos de los pueblos indígenas. Asimismo, el Relator Especial recomienda reformar los procedimientos existentes del Fondo de Tierras y Aguas para adecuarlo a las normas contemporáneas de reconocimiento y restitución de los derechos de los pueblos indígenas a las tierras y recursos de ocupación y uso tradicional o ancestral, especialmente a la luz de la reciente ratificación del Convenio por parte de Chile.

#### C. La explotación de los recursos naturales

55. En el caso de proyectos ya operativos de inversión industrial y de extracción de recursos naturales, se deben aplicar procesos de consulta con respecto a sus impactos en los derechos, tierras y territorios de comunidades indígenas y tomar todas las medidas de mitigación de impactos, reparación y justa compensación a las comunidades indígenas afectadas.

56. El Relator Especial enfatiza la necesidad de realizar consultas en relación con cualquier proyecto que pueda afectar las tierras, territorios y otros recursos de alguna comunidad indígena —tanto al interior como al exterior de las denominadas "Áreas de Desarrollo Indígena"— de conformidad con las normas internacionales aplicables.

#### D. Conflictos por reivindicaciones de tierras mapuches

57. El Relator Especial observa que la falta de un mecanismo para reivindicar los derechos a las tierras ancestrales o a reparar a los indígenas por las tierras que hayan sido tomadas sin su consentimiento, como se menciona arriba, podría haber contribuido a un ambiente de enfrentamiento en el que algunos miembros de las comunidades mapuches se habrían sentido sin opciones adecuadas y, por ende, habrían optado por la protesta social que en algunos casos implicaría la comisión de delitos y de actos contrarios al orden público.

58. Asimismo, observa que uno de los efectos colaterales de una política penal que ha sido materia de alegaciones sobre el incumplimiento de la normativa internacional y las garantías procesales internas, es la estigmatización de los indígenas y una dinámica general de controversia entre los mapuches y las autoridades estatales, que no contribuye a la búsqueda de soluciones constructivas orientadas a determinar los orígenes de la protesta.

59. Esta dinámica puede haber contribuido a generar un ambiente crítico de desconfianza de los indígenas hacia las autoridades estatales, que ha afectado de manera negativa a la convivencia y legitimidad democráticas, contribuyendo al descontento general sobre las iniciativas del Gobierno de Chile en materia indígena que el Relator Especial observó durante su visita.

60. El Relator Especial manifiesta la necesidad de profundizar en una revisión de la política penal aplicada en los últimos años respecto a comunidades y personas indígenas y sus actos de protesta, de modo que ésta se oriente a la búsqueda de soluciones que permitan la compatibilidad entre los fines de orden público y el respeto a las normas internacionales y contribuir a crear un clima de gobernabilidad democrática entre los mapuches y las autoridades estatales.

61. El Relator Especial tiene presente el compromiso hecho en años anteriores por el Gobierno e informado a los órganos de derechos humanos, de no aplicar la Ley antiterrorista para procesar a individuos en casos vinculados con movimientos sociales mapuches y hace un llamado a las autoridades competentes para que cumplan con dicho compromiso. Reitera la importancia, en este sentido, de reformar la Ley N° 18314 y adoptar una definición más precisa de los delitos de terrorismo, de acuerdo con las recomendaciones pertinentes del Comité de Derechos Humanos y del Comité para la Eliminación de la Discriminación Racial.

62. El Relator Especial recibe con preocupación las alegaciones sobre abusos y violencia ejercida por parte de la policía contra miembros del pueblo mapuche, en el contexto de allanamiento y otras operaciones policiales. El Relator Especial expresa su pesar por la muerte del joven mapuche José Facundo Mendoza Collio ocurrida el 12 de agosto de 2009, como consecuencia de disparos de policías. El Relator Especial hace un llamado a que las autoridades competentes investiguen las quejas de abusos y violencia contra las personas indígenas cometidas por miembros de la policía, a que sean enjuiciadas y sancionadas las personas responsables de dichos actos, y que se repare a las víctimas o a los familiares de las víctimas. Además, el Relator Especial exhorta a las autoridades competentes a que tomen las medidas necesarias para prevenir dichos actos.

#### E. Presupuesto Público

63. El Relator Especial enfatiza la necesidad de que la Ley de Presupuesto Público dote del financiamiento necesario a las políticas y programas dirigidos a los pueblos indígenas, en cumplimiento del artículo 2 del Pacto Internacional de Derechos Económicos, Sociales y Culturales, del deber estatal de adoptar las medidas "hasta el máximo de los recursos de que disponga", y de la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, para dar plena efectividad a los derechos humanos. Debiera prestarse especial atención al financiamiento, entre otros, de programas de tierras y aguas, educación bilingüe intercultural, hogares de estudiantes indígenas, salud intercultural, y asegurar el financiamiento de los procesos de consulta.

#### F. Observaciones finales

64. El Relator Especial toma nota del compromiso del Estado frente a la adopción de todas las medidas necesarias para implementar el Convenio N° 169 de la OIT, incluida la adopción de reformas de legislación sectorial, y urge al Estado a cumplir con estos compromisos en plena consulta con los pueblos indígenas, haciendo una interpretación evolutiva del Convenio en vista de las provisiones de la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas.

65. Es importante que el Estado siga teniendo presente las recomendaciones aplicables del anterior Relator Especial, Rodolfo Stavenhagen, en su informe del año 2004, así como el conjunto de las recomendaciones en materia indígena formuladas por los órganos de tratados de derechos humanos de las Naciones Unidas en sus informes sobre Chile, y las conclusiones y recomendaciones del examen periódico universal de Chile de mayo de 2009.

66. El Relator Especial desea retomar en particular la recomendación del anterior Relator Especial que los órganos de las Naciones Unidas en Chile, incluida la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, en cooperación con el Gobierno, los pueblos indígenas del país y otras partes interesadas, proporcionen asistencia técnica al Estado para poner en práctica las recomendaciones establecidas en el presente informe.

67. El Relator Especial insta al Estado, a las agencias de las Naciones Unidas en Chile, organizaciones de los pueblos indígenas y de la sociedad civil chilena, y a los medios de comunicación, a asegurar la difusión del presente informe.

68. El Relator Especial insta al Estado de Chile, a los pueblos indígenas, a los actores políticos y de la sociedad civil chilena a establecer procesos de diálogo y adopción de pactos sociales duraderos, dirigidos a la implementación de las recomendaciones de los distintos órganos de derechos humanos, del Convenio N° 169 de la OIT, la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, y las recomendaciones del presente informe.

## Colombia

### **Introduction**

During the period under review, two special procedures mandate holders visited the country. The Working Group on arbitrary detention visited from 1 to 10 October 2008 (please refer to document A/HRC/10/21/Add.3). The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited the country from 22 to 27 July 2009. The preliminary note (please refer to document A/HRC/12/34/Add.9) on this visit did not provide detailed conclusions and recommendations. Excerpts provided below are some of the issues that the preliminary note highlights. It is available in Spanish only.

### **Conclusions** of the Working Group on arbitrary detention (A/HRC/10/21/Add.3, para.95-102)

95. The Working Group highlights certain efforts made by the Government of Colombia to provide the country with a legal framework for detention that observes all the guarantees established in international human rights instruments, such as the entry into force of Act No. 906, the new Code of Criminal Procedure.

96. It regrets, however, that there have also been some backward steps, such as those highlighted in paragraph 28 above, and that the new criminal procedure legislation has been brought in alongside the old, as established under Act No. 600, for offences committed while the latter was still in force, for the simple reason that the events took place prior to the entry into force of the new legislation. Similarly, Act No. 1142 decreases to a large extent the effectiveness of the new legal system.

97. The Working Group considers that, in accordance with article 9, paragraph 3, of the International Covenant on Civil and Political Rights, pre-trial detention should be used only in exceptional circumstances, and that deprivation of freedom of persons whose guilt has not yet been proven by a court should be avoided.

98. The Group noted that the prosecutor's office issues a great many arrest warrants without significant objective evidence and based solely on the testimony of former guerrillas who have been demobilized or reintegrated into society and who obtain privileges for their testimony. The targets of these arrests, under warrants that are based on insufficient evidence, are often human rights defenders, community leaders, trade unionists, indigenous people and campesinos.

99. In the Group's view, mass detentions do not allow each person to be treated as an individual in criminal proceedings, which are meant to determine the guilt of each accused person.

100. The lack of legal regulation of administrative pre-trial detention, and the failure to implement the rigorous requirements of Constitutional Court judgement No. C-024 of 1994 have led to many arbitrary detentions. Similarly, the delegation - express or accepted - to companies or individuals of powers to detain, as well as the loose interpretation of flagrante delicto have also led to many arbitrary detentions.

101. The Working Group noted a fierce tension between the judicial and executive branches, which manifested itself in a strike of the judiciary that lasted more than 40 days and was taking place during the Group's visit. The strike affected the legal framework for detention which basically concerns the guarantees resulting from the work of the judges.

102. The Working Group considers that public defenders are, in the majority of cases, doing their jobs professionally and to a high standard. However, some detainees reported cases of corruption among the lawyers performing this task, which calls into question their positive assessment and considers such cases, must be duly eradicated.

### **Recommendations** (A/HRC/10/21/Add.3, para.103)

103. In the light of the above observations, the Working Group suggests that the Government of Colombia should consider the following recommendations:

- (a) Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- (b) Repeal the legal provisions that contradict the legal framework for detention in the Code of Criminal Procedure contained in Act No. 906;
- (c) Amend its legislation so that the new Code is valid for any offence, regardless of the date on which it was committed, while maintaining the exception for proceedings that were already under way under Act No. 600;
- (d) Put a stop to the practice and justification of administrative pre-trial detention from the law, and from the actions and public discourse of the authorities and give due consideration to the draft Civil Coexistence Code;
- (e) Put a stop to mass detentions that deprive persons of liberty even though no individual arrest warrant has been obtained in advance and the individual has not been caught in flagrante delicto; and to arrests with warrants that are based on insufficient evidence, such as the testimony of former guerrillas;
- (f) Eradicate from discourse and practice the support for or justification of any detention carried out by members of the armed forces, ensuring that they do not have powers of deprivation of liberty, imposing appropriate penalties for any such detentions;
- (g) Adopt the policy recommended in the previous section also in respect of illegal arrests made by agents of private security, mining or oil company agents or other individuals;
- (h) Provide and ensure that, when members of the army, navy or agents of private companies detain a person, the National Police officials at the places of detention, the prosecutors and the judges that receive them identify those who carried out the arrest and question them about the detention and the events that led to it;
- (i) Appoint judges specializing in expedited procedures, as well as prosecutors and public defenders to bring to a swift end trials that are still under way under Act No. 600 and clarify their working conditions;
- (j) Ensure that all State bodies responsible for human rights participate and assume their responsibilities in combating corruption in the judicial systems;
- (k) Investigate and follow up any army or navy operations that lead to the civilian deaths, injuries or detentions, through independent and impartial prosecutors and judges, rejecting the intervention of military courts.
- (l) Invite the Special Rapporteur on the independence of judges and lawyers to the country with a view to collaborating to establish the necessary framework for the relationship between the judiciary and the executive, as the rupture between the two has prevented the judiciary from properly performing its role as guarantor of basic rights - which has undertaken - and, which was one of the factors that led to the strike of the judges, who are not covered by guaranteed non-removability, which took place during the Working Group's visit.

**Conclusions and recommendations** of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34/Add.9, para.8-12) (Preliminary note)

8. Por otro lado, el Relator Especial nota que persisten alegaciones de violaciones de derechos humanos por miembros de la fuerza pública y que siguen sin ser resueltos varios casos con víctimas indígenas. El Relator Especial reconoce las iniciativas de la fuerza pública para promover el respeto de los derechos humanos en el desempeño de sus funciones e insta a fortalecer su aplicación práctica con la cooperación internacional, en particular de la Oficina de del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. También urge a la fuerza pública a respetar la autonomía de los pueblos indígenas y concertar con las autoridades indígenas las condiciones de cualquier presencia necesaria dentro de sus territorios.

9. El Relator Especial enfatiza la necesidad de fortalecer programas que implementen los derechos sociales y económicos de los pueblos indígenas, incluida la provisión de alimentos y servicios de salud, especialmente para aquellas comunidades desplazadas y afectadas por el conflicto armado. Es preocupante que en departamentos con altos porcentajes de población indígena, algunos indicadores, como la

mortalidad materna e infantil, presenten índices mucho más altos que la media nacional. En particular, el Relator Especial expresa su preocupación por la situación de la niñez y las mujeres indígenas afectadas por el conflicto armado, y urge al Gobierno a fortalecer sus programas de servicios de atención para responder de manera efectiva a estas necesidades.

10. Una exigencia persistente de los pueblos indígenas en Colombia es el derecho a la tierra y al territorio. Durante las últimas décadas, Colombia ha avanzado en el reconocimiento de los derechos territoriales de los pueblos indígenas en el país. Sin embargo, aún quedan muchos reclamos territoriales indígenas por resolver y compromisos por el Estado que todavía no han sido cumplidos al respecto. Además, la existencia de intereses comerciales extensivos en los recursos naturales de los territorios de los pueblos indígenas amenaza en muchas ocasiones los derechos de los pueblos indígenas, tal como lo ha señalado la Corte Constitucional. El Relator Especial enfatiza que el reconocimiento y protección de los derechos territoriales de los pueblos indígenas son necesarios para establecer condiciones sostenibles de paz y asegurar la supervivencia de los pueblos indígenas. Asimismo, el Relator Especial señala la necesidad de armonizar la política pública de desarrollo económico del país, en especial en lo que se refiere a los denominados "megaproyectos" relativos a la extracción de recursos o infraestructura, con los derechos humanos colectivos e individuales de los pueblos indígenas.

11. Tanto los pueblos indígenas como la Corte Constitucional han identificado la falta de consulta previa en decisiones que les afectan como un problema persistente. En este sentido, recuerda que la Corte ha declarado inconstitucionales decisiones administrativas y leyes, más recientemente la Ley general forestal y el Estatuto de desarrollo rural, por no haber sido consultadas adecuadamente con los pueblos indígenas. El Relator Especial toma nota de los esfuerzos del Gobierno en este sentido, incluida la preparación de una propuesta de ley que regule la consulta previa, y confía que el acompañamiento del sistema de las Naciones Unidas ayude en este respecto, especialmente la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. Al respecto, el Relator Especial observa que es fundamental concertar con los pueblos indígenas el proyecto de ley sobre la consulta y asegurar que sea consistente con las normas internacionales aplicables y la jurisprudencia de la Corte Constitucional.

12. El Relator Especial urge a todas las partes interesadas a seguir fortaleciendo y hacer efectivos mecanismos de interlocución y concertación entre el Gobierno y los pueblos indígenas. En este sentido, el Relator Especial enfatiza la necesidad de crear mecanismos de confianza y garantías entre las partes.

## Costa Rica

### Introduction

During the period under review, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation visited Costa Rica from 19 to 27 March 2009 (please refer to document A/HRC/12/24/Add.1).

### Conclusions and recommendations (A/HRC/12/24/Add.1, para.74-88)

74. The independent expert recommends that Costa Rica move as expeditiously as possible towards the adoption of a new water law. Such a law should rationalize the existing legal framework for the management and use of water resources, which is currently dispersed throughout a large number of laws and regulations, and adapt it to the present economic and social situation of the country. The law should also better define the roles and competencies of the different institutions working in the water sector, as recommended below. Civil society organizations with expertise in human rights, environmental protection and water-related issues should be involved in the design, future implementation and monitoring of the law.

75. The new water law should:

- (a) Expressly recognize, in the light of the jurisprudence of the Constitutional Chamber, and taking into account general comment No. 15 (2002) on the right to water of the Committee on Economic, Social and Cultural Rights, that access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses constitutes a fundamental human right and a prerequisite for the realization of other rights enshrined in the International Bill of Rights, especially the right to life and the right to health;
- (b) Recognize that water is a limited natural resource and that its management and use should be based on the principles of sustainable development, equity and inter-generational solidarity;<sup>4</sup>
- (c) Restate that water for personal and domestic uses should be accorded the highest priority over other possible uses, in particular during times of water scarcity;<sup>5</sup>
- (d) Include appropriate mechanisms to ensure that water and water facilities/services are accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;<sup>6</sup>
- (e) Incorporate measures to improve and monitor the quality of potable water;
- (f) Introduce appropriate instruments to prevent and monitor the contamination of surface and groundwater sources, such as economic instruments, charges and taxes aimed at creating an incentive for polluters to limit activities that are harmful to the environment;
- (g) Elaborate, in the light of principle 10 of the Rio Declaration, mechanisms to raise awareness among the general public about the importance of sustainable management and use of water, and to facilitate the effective participation of concerned communities in decision-making processes that may affect them.

76. The independent expert also recommends that the legal regime applicable to ASADAS be reviewed so as to strengthen their adequate management and operation.

77. The independent expert recommends that Costa Rica undertake a comprehensive review of its normative framework on sanitation, as envisaged in the national programme for the adequate management of wastewater in Costa Rica for the period 2009-2015, with a view to ensuring the establishment of a coherent and comprehensive system for the collection, management, treatment and disposal of human excreta and wastewater. Such legislation should expressly recognize that access to sanitation constitutes a *condicio sine qua non* for the effective exercise of other rights included in international human rights

<sup>4</sup> See general comment No. 15, paras.1 and 11, and principles 1, 8, 9, 10, 12 and 15 of the Rio Declaration.

<sup>5</sup> Water Law No. 276 of 1946, arts.140-142. See also general comment No. 15, para.6.

<sup>6</sup> General comment No. 15, paras.12-16.

treaties to which Costa Rica is a party, including the right to an adequate standard of living and the right to health.

78. The independent expert recommends that the Government of Costa Rica clarify the roles and responsibilities of the various institutions working in the water sector, with a view to ensuring the effective implementation of the legislation and policies relating to water and sanitation and avoiding duplication of responsibilities and conflicting competencies. The elaboration and implementation of a national plan for the comprehensive management of water resources would be an important step towards the rationalization and simplification of the water sector.

79. The independent expert recommends that Costa Rica take all appropriate steps to ensure the effective implementation of legislation on water and sanitation, in particular the laws and regulations concerning access to safe drinking water and the adequate collection, management, treatment and disposal of human excreta and wastewater. She recommends, in particular, that the capacity of national and local institutions responsible for monitoring and ensuring compliance with the legislation on water management and sanitation be strengthened through, *inter alia*, the allocation of appropriate human, technical and financial resources to those institutions. The expert also calls for the allocation of sufficient human and financial resources to the Constitutional Chamber of the Supreme Court of Justice and the Environmental Administrative Tribunal, in order to ensure that any person whose rights or freedoms are violated have access to an effective remedy, as provided by article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

80. The independent expert urges Costa Rica to strengthen the implementation of its national legislation and policies on the collection, management, treatment and disposal of human excreta and wastewater in order to prevent the contamination of rivers and other water streams. The national programme for the adequate management of wastewater in Costa Rica for the period 2009-2015 and the regulation creating the environmental tax for dumping polluting substances represent, in the expert's view, important steps towards the achievement of this goal.

81. The independent expert recommends that Costa Rica prepare a national water balance, as well as water balances for the different water basins of the country, in order to assess the present and future availability of water for human consumption. The expert stresses that such an evaluation constitutes a necessary precondition for the sustainable management and use of the country's water resources.

82. The independent expert urges the Government to take all appropriate measures to reduce the serious disparities still existing in some provinces and districts of Costa Rica with regard to access to safe drinking water. Such measures should include the effective implementation of the national programme of potable water improvement and quality sustainability of potable water services for the period 2007-2015 (decree No. 33953-S-MINAE of 2007) and the allocation of adequate financial and technical resources to ensure the maintenance or improvement of existing infrastructures and more efficient management and operation of rural and municipal aqueducts.

83. The independent expert recommends that Costa Rica takes appropriate measures to ensure that water is affordable for all.<sup>7</sup> Such measures could include the integration of a pro-poor component in the pricing system and the provision of targeted subsidies to low-income users.

84. The independent expert urges Costa Rica to take immediate steps to develop, in close consultation with the communities concerned, strategic plans aimed at providing access to safe drinking water and adequate sanitation to indigenous peoples living in traditional reserves. Such plans should take into account the customs and traditions of the communities concerned and specifically include capacity-building measures aimed at ensuring the participation of community members in the development, management and maintenance of aqueducts and sanitation systems.

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<sup>7</sup> See general comment No. 15, para.12.

85. The independent expert recommends that Costa Rica adopt, as a matter of priority, the draft executive decrees regulating the use of Bromacil and Diurón in agricultural production.

86. The independent expert recommends that Costa Rica develop and implement appropriate policies to ensure the sustainable development of tourist and real estate activities, especially in coastal areas. In order to avoid the depletion of water sources currently used by local communities, the concession of new water permits or licences for the drilling of new wells should be made conditional upon the realization of an environmental impact assessment to evaluate the long-term effects that the new development may have on the availability and quality of water resources and, more in general, on the natural environment. In the light of principles 10 and 17 of the Rio Declaration, this assessment should be carried out by an independent authority, with the participation of concerned individuals and communities.

87. With regard to the construction of a new pipeline in Sardinal to supply water to tourism and real estate projects in the nearby Playa del Coco and Playa Hermosa, the independent expert reminds all parties involved that, according to the Costa Rican legislation, water for domestic consumption is accorded the highest priority over other possible uses, especially in situations of water scarcity (articles 140-142 of the Water Law). As requested by the Constitutional Chamber, the expert calls on the Government to take all appropriate measures to ensure the meaningful participation of affected communities in monitoring the implementation of the project, with a view to ensuring the sustainable management and use of the Sardinal aquifer.

88. Lastly, the independent expert considers that Costa Rica should develop, in addition to the existing programmes on environmental protection, such as the Blue Flag Ecological Programme, specific educational programmes and awareness-raising initiatives for the public in general aimed at promoting the preservation and sustainable use of water resources and the adequate management and disposal of human excreta and wastewater.



## Côte d'Ivoire

### **Introduction**

During the period under review, the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights visited Côte d'Ivoire from 4 to 8 August 2008. The visit is linked to the visit of the mandate holder to Netherlands from 26 to 28 November 2008 following which a consolidated report was issued (please refer to document A/HRC/12/26/Add.2).

### **Conclusions and recommendations** (A/HRC/12/26/Add.2, para.86 pertains to Côte d'Ivoire only.)

86. The Special Rapporteur recommends that the Government of Côte d'Ivoire and relevant State actors:

- (a) Engage in a broad consultative process, including relevant civil society actors, and specifically seek the views of victims, families of victims and victims' associations on outstanding issues and measures required to address possible long-term human health and environmental effects of the incident;
- (b) Allocate sufficient resources and seek financial and technical assistance to ensure full decontamination of all remaining dumping sites as soon as possible;
- (c) Take further action to protect the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health, including the right to a healthy environment of all affected victims and their families, by, inter alia, conducting a health survey in affected areas and a mapping of outstanding health issues and providing adequate medical assistance to victims, including treatment of new and long-term manifestations of illnesses as a result of the dumping;
- (d) Take additional measures to intensify the dispensation of compensation to all victims and to complete this process as a matter of urgency in a clear and transparent manner;
- (e) Implement structural reforms to improve waste treatment capacities in the port of Abidjan and strengthen monitoring and supervision by relevant environmental agencies in order to ensure that waste is treated in an environmentally sound manner;
- (f) Ensure full access to information for those affected on measures taken to address possible long-term adverse effects on health and the environment of the incident.

## Democratic Republic of North Korea

### **Introduction**

During the period under review, Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea issued a report (please refer to document A/HRC/10/18).

### **Conclusions and recommendations** (A/HRC/10/18, para.79 - 81).

79. The predicament ensuing from the broad range of systematic and widespread human rights violations in the Democratic People's Republic of Korea requires urgent attention at all levels, from national to international. Of particular concern are the pervasive transgressions in relation to food and other basic necessities, personal security, freedoms, asylum and migration, and specific groups, such as women and children.

80. The Democratic People's Republic of Korea should take the following measures:

(a) Immediately (short-term):

- (i) Ensure effective provision of and access to food and other basic necessities for those in need of assistance, cooperate constructively with United Nations agencies and other humanitarian actors on the issue, and allow people to undertake economic activities to satisfy their basic needs and supplement their livelihood without State interference;
- (ii) End the punishment of those who seek asylum abroad and who are sent back to the country, and instruct officials clearly to avoid detention and inhumane treatment of such persons;
- (iii) Put an end to public executions and abuses against the security of the person, and other violations of rights and freedoms, by means of law reforms and implementation measures, clearer instructions to law enforcers to respect human rights, related capacity-building and monitoring of their work to ensure accountability;
- (iv) Cooperate effectively to resolve the issue of abducted foreigners;
- (v) Respond constructively to the recommendations of the Special Rapporteur, reply effectively to his communications, and invite the Special Rapporteur to visit the country to take stock of the situation and recommend needed actions;

(b) Progressively (longer-term):

- (i) Modernize the national system by instituting reforms to ensure greater participation of the people in the process and compliance with international human rights standards;
- (ii) Institute equitable development measures based upon a "people first" policy, and reallocate national budgets, including military budgets, to the social sector;
- (iii) Introduce more extensive food security-related measures, such as sound agricultural practices, environment conservation, disaster preparedness and people's participation and mobilization in planning, programming and benefit-sharing;
- (iv) Guarantee personal security and freedoms by dismantling the pervasive surveillance and informant/intelligence system, reforming the justice/prison system and abiding by the rule of law, with safeguards for accused persons, fair trials, the development of an independent judiciary, and checks and balances against abuses of power;
- (v) Become a party to core human rights treaties and take measures to implement them effectively;
- (vi) Address the vulnerability facing specific groups, such as women, children, persons with disabilities and the elderly, by eliminating discrimination and highlighting human rights protection against neglect, abuse, exploitation and violence;
- (vii) Address the root causes of refugee outflows; criminalize those who exploit them through human smuggling and trafficking, while not criminalizing the victims;
- (viii) Act against the impunity of those responsible for violence and violations by permitting means of effective redress at the national and local levels;
- (ix) Engage with the Human Rights Council and its universal periodic review to ensure transparency and reforms, and request technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights comprehensively;

(x) Initiate constructive dialogue with the treaty bodies that monitor the conventions to which the country is a party, and cooperate with all United Nations mechanisms, including the special procedures, to ensure effective follow-up of their recommendations and access to the country.

81. The Special Rapporteur invites the international community:

(a) To emphasize the need for an integrated approach that includes the prevention of violations, effective protection of human rights, the provision of care and assistance in an accessible and accountable manner, participation of people in the enjoyment of their rights and freedoms and ensuring the country's development in a democratic setting;

(b) To advocate for the need for a "people first" rather than the current "military first" policy, complemented by an equitable development process, food aid and food security, with due respect for the principle of "no access, no food", coupled with adequate monitoring;

(c) To respect the rights of refugees, particularly the principle of non-refoulement, and the human rights of migrants, and to mitigate the strictures of national immigration laws that might otherwise lead to the detention or forced return of refugees or asylum seekers;

(d) To maximize dialogue with the Government of the Democratic People's Republic of Korea to enlarge the space for human rights discourse and action, offering relevant incentives and graduated measures, and to use the State's refusal to cooperate with the Special Rapporteur as a key indicator or benchmark for the forthcoming universal periodic review of its human rights record;

(e) To address impunity from different viewpoints, whether in terms of State responsibility and/or individual criminal responsibility, and enable the totality of the United Nations system, especially the Security Council, to take measures to prevent egregious violations, protect people from victimization and provide them with effective redress, with due regard for the call for broad-based participation of people in governance and government.

## Democratic Republic of the Congo

### **Introduction**

The Human Rights Council in its resolutions 7/20 and S 8/1 invited the seven thematic special procedures, including the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary General on the human rights of internally displaced persons, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders, the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, in addition to the Special Representative of the Secretary General for children and armed conflict, submitting the present report to make recommendations on how best to assist technically the Democratic Republic of the Congo (DRC) in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government. The Council also underlined the need to urgently examine the current human rights situation in the east of the country, in particular as it regards violence against women (please refer to document A/HRC/10/59).

**Conclusions and recommendations** (A/HRC/10/18, para. 86 - 119).

86. In line with its international human rights commitment, the Government of the Democratic Republic of the Congo has the obligation to respect, protect and fulfil the human rights of everybody living in the DRC. This implies duties to refrain from certain acts, but the Government has, as the Council stressed in resolution S 8/1, paragraph 6, also “the primary responsibility to make every effort to strengthen the protection of the civilian population and to investigate and bring to justice perpetrators of violations of human rights and of international humanitarian law.” More generally, the Congolese authorities have the obligation to protect the population from violence, provide access to justice and create conditions in which the basic needs of the population are secured. The Congolese State largely abdicated these responsibilities during decades of autocratic rule, followed by years of armed conflict that further eroded the institutional capacity of the authorities at all levels. In many ways, human rights concerns in the DRC centre around the question what the State fails to do for its people, rather than what it does to them.

87. The seven thematic special procedures welcome the many strategy papers and action plans in human rights relevant areas that the Government, often in cooperation with the international community, has prepared. Such documents are first steps: they only obtain meaning if they are actually implemented by the responsible Government authorities. Technical assistance, as the term indicates, can only assist the Government in the implementation process, but cannot replace government action.

88. Armed conflict has ended in most of the country and the elected authorities are now in place to implement much needed reforms without delay on the ground. This being said, the seven thematic special procedures recognize that considerable parts of the east of the DRC still experience armed conflict. The existing armed conflicts exacerbate the extent and severity of human rights violations and also pose a challenge to implementing government initiatives and accompanying technical assistance measures to address structural human rights concerns in key areas such as the justice and security sectors. The resolution of the armed conflicts in DRC will require multilateral political processes involving Governments of the DRC, neighbouring countries and beyond. However, political settlements achieved will only be sustainable, if the authorities seriously and immediately address the human rights concerns underlying the conflicts and the international community is prepared to dedicate the necessary technical assistance to this crucial element of successful peacebuilding. The absence of peace in the entire territory must not be an excuse to delay reforms, but makes it ever more urgent to undertake them.

### **A. Priority objectives and technical assistance needs in this regard**

89. The baseline assessment carried out by the seven thematic special procedures highlights that the human rights problems in the entire territory of the DRC are serious, multifaceted and deeply rooted in the political, economic and social dynamics at the local, national and regional levels. On the basis of their assessment, the authors have identified eight priority objectives for Government action along with technical assistance needs in this regard. While several of them are reform areas where human rights actors (e.g. the human rights and rule of law components of MONUC) have key roles in assisting the

Government, other actors will have to take the lead in other areas that are equally important from a human rights perspective, with human rights actors only playing a complementary role.

90. To a large extent the seven thematic special procedures have drawn on existing recommendations that are longstanding and have been reiterated many times by the United Nations, civil society organizations and experts. These include the sets of recommendations formulated by those among the seven mandate holders who visited the DRC on prior occasions, which remain overall valid since the authorities have heeded few of them. Some of the recommendations call for full implementation or expansion of existing programmes and projects undertaken within MONUC or on a bilateral basis while others complement existing with new reform activities.

### **1. Fighting impunity and strengthening the law enforcement and justice sectors**

91. Fighting impunity should be the number one priority as tolerance for killings, rapes or arbitrary displacement is a key reason for the continuing prevalence of these and similar human rights violations. The fight against impunity requires a strong political will on the part of the DRC authorities to take action against identified perpetrators of international crimes regardless of their rank or connections. The work of the International Court of Justice may supplement, but not replace national efforts. However, the impunity problem undeniably also has a capacity dimension. On the basis of the various action plans drawn by relevant Ministries, donors should continue to prioritize reform across the entire justice chain – police, prosecution, courts and especially also the penitentiary system. In the medium and long term such efforts will only be useful and sustainable if the Government itself shows a willingness to increase the justice portion of the national budget further to an acceptable level comparable with other countries (2.6 per cent).

92. At the national level, donors should emphasize support for the newly established Higher Council of Judges. Support for other elements of the judicial architecture set out by the Constitution, including the Cour de cassation, the Constitutional Court and the Conseil d'État, will also be needed, once the legislation to establish these institutions has been passed. Civilian jurisdiction needs to be further strengthened through legislation assigning criminal jurisdiction over perpetrators from among the police or civilian population to civilian prosecutors and courts. Nevertheless, the military justice system should not be neglected in donor efforts. Security sector reform partners should consider providing, at least in the conflict affected provinces, experienced military advocates from their militaries as advisors to military prosecutors and courts. They would assist in and monitor the daily work of these organs without, however, assuming any decision making authority.

93. Perhaps even more important is the expansion of the state justice system in the rural territories. One state measure worth supporting would be the establishment of a network of justices of the peace that are linked up with traditional modes of dispute settlement as well as of mobile higher courts to address more serious cases. Measures to increase payment and other support for those officials who are willing to serve in conflict zones, remote areas or other hardship posts may help addressing the chronic lack of qualified personnel in these areas.

94. International law does not only oblige the State to duly punish perpetrators of killings, sexual violence and other violent crime, but the State also has to ensure that the victim or surviving family receives compensation from the perpetrator's side. Moreover, ensuring compensation payments will motivate victims to claim justice, rather than accepting amicably settlements or staying silent altogether. Consideration should be given to establishing a compensation guarantee fund, managed jointly by the Government, participating donors and civil society, which would pay out compensation awarded by national courts or the International Criminal Court to victims of serious human rights violations. The fund would initially rely on matching government and donor contributions, but then seek repayment of disbursed amounts from the State or private individuals cited as responsible. In a pilot stage such a fund could cover one or two provinces and focus in particular on awards based on sexual violence cases.

95. Transitional justice for the massive violations that took place between 1993 and 2003 is another area that should be prioritized. These violations are generally outside the jurisdiction of the International Criminal Court, which can only be seized of cases that took place after 1 July 2002. The establishment of joint benches, comprising national and international judges and sitting in national courts, might be an appropriate transitional justice tool for the DRC that can also be combined with truth seeking initiatives.

### **2. Reforming the security sector**

96. The police, intelligence services and in particular the FARDC all remain in need of serious and comprehensive reform. In many ways, the operational weakness of FARDC and also the present lack of capacity of the police constitute a human rights concern that should rank very high on the list of priorities.

Not only does the FARDC often prove incapable of protecting the civilian population from attacks by armed groups, but it also becomes a perpetrator of violations because it lacks the command and control structures and accountability mechanisms to prevent abuses from within its ranks. The minimum training provided in the brassage process has proven inadequate. There is a need for more comprehensive training programmes. Coordinated training should target officers and systematically include international humanitarian law and human rights in the curriculum. This will not only require substantial resources, but also willingness among the various countries to agree on a curriculum and coordinate their efforts generally on the basis of a shared national security reform strategy. As an accompanying measure donors should also continue and expand programmes to provide units, particularly in conflict areas, with supplies and ensure that they receive their salary. The construction of barracks would allow keeping soldiers away from civilian populations.

97. The Government should remove perpetrators of serious human rights violations that have already been identified as such from its ranks and files without further delay. In addition, the Government and its major partners in security reform should set up a comprehensive and adequately resourced secondary screening mechanism, where each officer is vetted for his past human rights record and subjected to a determination of his ability to command in accordance with principles of international humanitarian law and the values embodied in the Constitution of the DRC. Candidates who fail should be excluded and blacklisted from joining the military, police and intelligence services, with appropriate due process mechanisms and transparent processes. The international community should technically assist this process by providing specialized international staff as well resources.

98. Donors should insist that training and support and accountability for human rights violations are mutually reinforcing elements and make extension of programmes contingent on serious government efforts to clean the ranks of the security forces. Similarly, MONUC should not cooperate with FARDC commanders and units implicated in human rights violations.

### **3. Preventing the (re) recruitment of children by armed actors and socially reintegrating children associated with armed actors**

99. All parties to the conflict must cease any new recruitment of children and release unconditionally all those currently associated with their forces. They must prepare, in the framework of Security Council resolution 1612 (2005), action plans to identify, release and ensure effective and sustainable reintegration of all children associated with their forces, to prevent further recruitment and to address all other grave violations against children. Reintegration strategies should be community based and in line with the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups.

100. Demobilization, disarmament and reintegration (DDR) processes need to include procedures to recognize and assist women and girls associated with armed groups, in particular survivors of sexual violence. To mitigate the re recruitment of children due in part to insufficient reintegration support from earlier DDR processes, all stakeholders, including relevant government institutions, United Nations entities, NGOs and donors, should ensure the provision of flexible and multi year funding.

101. The Governments of the Democratic Republic of the Congo and neighbouring countries should enhance their cooperation to prevent cross border recruitment and to ensure the successful repatriation and reintegration of children formerly associated with groups in the DRC to their countries of origin. To help address cross border dimensions of the conflict and implications for children, United Nations country teams and peacekeeping operations should develop a joint strategy to monitor and report on grave child rights violations by groups such as LRA.

### **4. Protecting women's rights and ensuring gender equality in law and society**

102. There are clear indications that violence against women will remain pervasive even once armed conflict ends and relative stability has been established. Building on existing initiatives, while enhancing their coordination, donors should therefore continue to address violence against women and support to its survivors as a priority. Government initiatives with clear and tangible objectives such as the roadmap to fight impunity for sexual violence of the Ministry of Justice are worth supporting. The formation of specialized police units is another area that deserves donor support. Particular emphasis should lie on the hitherto largely neglected and underfunded area of socio economic reintegration of survivors of rape. Programs should not only cover the eastern provinces but also other parts of the country with high prevalence of violence against women and involve local women organisations.

103. The Ministry of Gender, Family and Children is drawing up essential legislation to reform the Family Code and implement the gender parity provision of the Constitution. Beyond technical advice,

donors should support advocacy and awareness raising programmes to make sure that these draft laws will be passed by parliament and signed into law.

104. The plans of the Minister of Gender to reconstitute the Conseil national de la femme would need to be closely examined. Technical assistance provided to this plan should not detract from crucial donor support to local Congolese women non governmental organizations.

#### **5. Addressing economic root causes of human rights violations**

105. The illegal exploitation of natural resources in the eastern DRC benefits armed groups and rogue elements in the state security forces; it perpetuates the armed conflicts and is often accompanied by serious human rights violations, namely forced labour. Seriously addressing the illicit exploitation of natural resources in the DRC will require exporters and consumers of Congolese mineral products to step up their due diligence efforts and publicly disclose what steps they have taken to prevent the purchase of mineral ore or its products mined in conflict areas of the DRC. Similarly, it also requires to develop concurrently the same requirement for due diligence at the DRC state level, to build the necessary capacity at the national level and to identify what role international technical cooperation should play in supporting it. Technical assistance partners can help the Government implement the Extractive Industries Transparency Initiative, for which the DRC was accepted as a candidate country in February 2008, or similar accountability mechanisms that will help prevent illegal diversion of state revenues and increase the resources available to the State.

106. With much of the international discourse focusing on illegal mining, many still fail to recognize the important role of local conflicts over land, exacerbated by several waves of displacement and returns. Beginning in provinces of particular concern such as North Kivu, community based land commissions should be set up, involving traditional leaders, provincial state officials and community representatives, in particular also women, returnees and minority groups, to address local disputes over land. The commissions should be provided with the resources to offer compensation as a last resort where there are competing legitimate claims or where a redistribution of land to marginalized sections of society is necessary to resolve conflicts and ensure justice. An alternative would be to give this role to the justices of peace as described above. A thorough analysis of existing mechanisms of alternative dispute resolution based on customary law would be needed in order to set up a system within the framework of the State that is acceptable and supported by the population.

#### **6. Protecting the rights of the displaced and minorities**

107. The Government, in particular the Ministry of Social and Humanitarian Affairs and its provincial counterparts in the eastern DRC, has to assume its responsibilities regarding protection and assistance for the internally displaced emanating from international and regional human rights treaties and the Protocol on Protection and Assistance to Internally Displaced Persons adopted at the International Conference on the Great Lakes Region which obliges the DRC to incorporate the United Nations Guiding Principles on Internal

Displacement (E/CN.4/1998/53/Add.2) into its domestic law. As a first step the Government, with expert technical advice, should develop a legislative framework, a strategy and a plan of action for the implementation of these obligations. Meanwhile, the donor community should begin prioritizing support to vulnerable host communities in areas of refuge as well as early recovery activities in return areas.

108. There is a risk that internally displaced persons cannot exercise their right to vote and be elected if the local elections planned for 2009 would take place before they can return. The National Election Commission, in cooperation with MONUC and other partners, should ensure registration of the displaced as voters and be supported to find ways to ensure (e.g. through provisions on absentee voting) that the displaced can in fact exercise their political rights.

109. In addition, and also to build a more inclusive society generally, the Government should launch a campaign in the eastern DRC to provide national identification and electoral cards to anyone qualifying for DRC nationality under the new nationality law of 12 November 2004. Implementation should be guided by a rebuttable presumption that those who currently live or prior to the armed conflict have lived in the DRC are considered nationals of the DRC. Solving the problem of nationality of Kinyarwanda speaking Congolese would enhance their sense of belonging, their participation in social life and contribute to reverse the widespread prejudice that this group is composed of “foreigners”.

110. These initiatives should be complemented by local conflict resolution and ethnic reconciliation initiatives involving all sectors of society including women, returnees as well as IDPs and refugees awaiting their return.

## **7. Providing access to health care, especially for marginalized groups**

111. In line with its human rights obligations, the Government has to make efforts to progressively re establish a functioning and accessible health system in the country, while ensuring minimum standards right away. It should prioritize immediate action to ensure that displaced populations have access to medical services, safe water and sanitation in order to avert the growing public health crisis. The specific health needs, especially those of particularly vulnerable groups, like women and children, need to be identified to ensure provision of adequate medical care and prevention of further health problems. In particular, urgent steps must be taken to ensure that fees do not become an obstacle for poor and vulnerable populations to access essential health care as such fees often are a key reason why persons with illnesses that could easily be treated die. The immediate abolishment of fees for forensic medical certificates for victims of sexual and gender based violence should be a first step. The seven thematic special procedures call upon the donor community to continue supporting the national health system as a priority, in particular its support for groups in a vulnerable situation. In areas of crisis, relevant agencies should focus on improving coordination mechanisms to ensure adequate and prioritized response to the health crisis.

## **8. Strengthening state and civil society structures to promote and protect human rights**

112. As soon as legislation on an independent national human rights commission is adopted, donors should provide adequate technical advice and assistance to establish the Commission and integrate it into regional and international networks of national human rights institutions. Within the commission, a human rights defenders focal point should be established whose tasks would include: investigating human rights violations against defenders; raising awareness on international and regional human rights instruments pertaining to the work of human rights defenders; ensuring that national legislation is in conformity with these instruments; making recommendations to the Government, Parliament and other state institutions with regard to the situation of human rights defenders, and following up on these recommendations; and offering legal assistance to human rights defenders.

113. Parallel to that, the Ministry of Human Rights should be empowered to identify human rights trends in consultation with civil society and ensure that they are taking into account in the policy making process at the national level. Donors should consider assisting the Ministry with funding to re establish small offices in the provinces and enable them to deal with complaints of the population against government officials regarding human rights issues. Furthermore, the Ministry should be trained by OHCHR on drafting methodology to meet in a timely manner its reporting obligations before United Nations treaty bodies. The Ministry should also translate the Declaration on Human Rights Defenders in the main local languages and disseminate it within the state apparatus and civil society, and deliver awareness raising training to the police, military and judicial officials on the role and activities of human rights defenders, including women defenders, with technical advice and assistance from OHCHR and NGOs.

114. More generally, the emergence of a confident and coordinated civil society that can only prosper in a state of democracy, rule of law and full government commitment to individual freedoms and liberties should be fostered and supported. The Government should recognize the legitimacy of the work of human rights defenders, including women defenders, and acknowledge it as human rights work. It should further remove all obstacles that impede their work, protect them from reprisals, and take proactive measures to support their work. The adoption of national and provincial laws on the protection of human rights defenders, developed in consultation with civil society and on the basis of technical advice from relevant international agencies, would be a particularly strong signal. OHCHR, MONUC, and the European Union should continue their witness protection programme and expand its ambit to human rights defenders in all provinces.

115. In addition, illegitimate restrictions on the exercise of the right to freedom of association should be lifted: when NGOs applying for registration comply with all administrative requirements, legal personality should be immediately granted to them. Furthermore, the regime of information governing the exercise of the right to freedom of peaceful assembly (article 26 of the Constitution) should be respected without any arbitrary interference from the executive. Finally, the draft bill on the organization and functioning of the Superior Council of Audiovisual and Communication, as well as the two draft bills contributing to the better exercise of the right to freedom of opinion and expression (notably by decriminalizing a number of press offences), should be adopted.

116. Donors can assist these efforts by continuing to fund protection and empowerment programmes benefitting the fledgling community of local NGOs, in particular groups representing women or



marginalized groups such as the BaTwa. Donors should also prioritize support for local organizations by earmarking a portion of their budget for direct support to such groups.

## **B. Recommendations on follow up to the present report**

117. In the light of the large ambit of human rights challenges in the DRC, the seven thematic special procedures have focused on identifying priorities for government action and technical assistance within the limitations of their respective mandates, while also developing a few exemplary proposals that can be implemented in the short to medium term with little resources.

118. In conducting their work, the authors noted that despite extensive efforts of the donor community to technically assist the Government in improving the human rights situation, there are no benchmarks against which to measure progress achieved by the Government. Benchmarks, established by the United Nations in consultation with the Government, civil society and donors, would be an important accountability measure and also of help in steering donor priorities.

119. The seven thematic special procedures urge the Council to continue taking a leadership role in ensuring that the human rights dimension of the peacebuilding process in the DRC is duly addressed. The situation in the east of the country is characterized by systematic and gross human rights violations, in particular committed by armed groups controlling territory and the state security forces. Another military escalation in the Kivus with potentially devastating human rights implications was underway when this report was finalized. The authors therefore recommend devising a dedicated follow up and monitoring mechanism that extends beyond the Universal Periodic Review Mechanism and ensures continued direct engagement with the Government and civil society. The Council should strongly consider creating a special procedures mandate on the human rights situation in the DRC, in particular areas affected or threatened by armed conflict. This would build on paragraph 6 of Council resolution 9/9 on the Protection of the Human Rights of Civilians in Armed Conflict, in which the Council calls upon States involved in such conflicts to facilitate the work of any mechanism that the Council may decide to establish, as and where appropriate, in response to such violations.

## Denmark

### Introduction

During the period under review, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Denmark from 2 to 9 May 2008 (please refer to document A/HRC/10/44/Add.2).

### Conclusions and recommendations (A/HRC/10/44/Add.2, para.70-79)

70. The Special Rapporteur reiterates his appreciation to the Government of Denmark for extending him an invitation to visit the country, and looks forward to continued cooperation in combating torture and ill-treatment.

71. Denmark has a long-standing commitment to and leadership in combating torture worldwide. At the Human Rights Council and the General Assembly, it is the central player in mobilizing the international community by proposing resolutions on combating torture every year. In Europe, Denmark leads efforts on the implementation of the European Union's foreign policy guidelines on torture in third countries. Moreover, it has a long history of generous support to civil society both at home and abroad, particularly in the area of rehabilitation for victims of torture. But apart from its role in international diplomacy, the Special Rapporteur witnessed over the course of his visit Denmark's genuine commitment to eradicating torture and ill-treatment first and foremost within the country. In fact, he did not receive any allegation of torture and only very few allegations of ill-treatment. Without question, the international community has much to learn from Denmark's example.

72. Based on his visits to prisons in Denmark and Greenland and his interviews with prison inmates, as well as discussion with staff from the Prison and Probation Service, the Special Rapporteur concludes that in most institutions the conditions of detention are of a very high standard. The principle of normalization which serves as a backbone of Denmark's prison system not only implies that many prisons in Denmark, including Greenland, are open prisons, but also brings about very good day-to-day living standards for detainees who benefit from an excellent infrastructure and a variety of activities. Particularly noteworthy are the very liberal visiting policies, which allow detainees to maintain good contacts with the outside world, and Denmark's efforts to establish a child-friendly environment within detention facilities. Furthermore, the Special Rapporteur was impressed by the excellent conditions of detention and psychological treatment provided to detainees with special needs in Herstedvester Institution.

73. The Special Rapporteur acknowledges that Denmark's particular practice of allowing male and female detainees to associate freely, based on the principle of normalization, is widely accepted in Danish society, including by female detainees. However, in light of international standards which advocate a segregation of the sexes and the risks of the practice of non-separation of men and women, he points to the need to rigorously ensure that appropriate safeguards are in place and that female detainees can freely decide whether or not they want to mix with men.

74. Notwithstanding the Government's efforts to reduce the use of solitary confinement, the Special Rapporteur, in line with the opinions expressed by the Committee against Torture and the European Committee for the Prevention of Torture, is concerned by the extensive recourse to this practice during criminal investigations in pre-trial detention, in order to manage certain categories of convicted prisoners or as a form of punishment for disciplinary infractions. Whereas solitary confinement may be used in very exceptional cases and for as short a time as possible, its prolonged use may lead to severe mental suffering, which in particular circumstances may be qualified as inhuman treatment. If prolonged pre-trial detention is used as a means of coercion to extort information or a confession, it may amount to torture.

75. With regard to detention of foreigners and asylum-seekers the Special Rapporteur, while being encouraged by the low number of asylum-seekers in detention as compared with some other European countries, is concerned by the fact that there is no maximum period for such administrative detention. Prolonged deprivation of liberty for administrative reasons without knowing the length of the detention

may amount to inhuman and degrading treatment. Furthermore, although mandatory habeas corpus proceedings exist, the Special Rapporteur received information indicating that legal challenges to administrative deprivation of liberty of foreigners are not effective in practice.

76. The Special Rapporteur commends Denmark's efforts in addressing domestic violence against women and the trafficking of women, inter alia by amending its domestic legislation and carrying out successful awareness-raising campaigns, including through successive plans of action. However, in his opinion the efforts of the Government are aimed less at the rehabilitation of victims of trafficking in Denmark than preparing their return to their countries of origin. While regretting that in Greenland domestic violence has so far not been adequately addressed, despite the particular severity of the problem in this self-governing province, the Special Rapporteur is encouraged by the plans of the Home Rule Government to elaborate a national strategy for action with regard to this issue.

77. The Special Rapporteur is encouraged by the establishment of an inter-ministerial working group to investigate the alleged CIA rendition flights operating through Denmark and Greenland. Nevertheless, he is alarmed about the consideration recently being given by the Government to employ diplomatic assurances to return suspected terrorists to countries known for practising torture. Such practice would constitute an attempt to circumvent the absolute prohibition of torture.

78. The Special Rapporteur recommends that the Government:

- (a) Incorporate a specific crime of torture in the criminal law;
- (b) Further reduce the use of solitary confinement, based on the unequivocal evidence of its negative mental health effects upon detainees;
- (c) Set an absolute limit to the length of detention of foreigners pending deportation, and review the practice of habeas corpus proceedings under section 37 of the Aliens Act;
- (d) Give greater attention to the rehabilitation of victims of human trafficking in Denmark;
- (e) Ensure that, where arrangements exist for male and female detainees to be accommodated in the same premises, the decision of a woman to be placed together with men is based on her completely free and informed decision, and scrupulously monitor appropriate safeguards to prevent abuse;
- (f) Refrain from the use of diplomatic assurances as a means of returning suspected terrorists to countries known for practising torture;
- (g) Ensure that investigations into alleged CIA rendition flights using Danish and Greenlandic airports are carried out in an inclusive and transparent manner;
- (h) Continue to promote and support international and national efforts relating to rehabilitation for victims of torture.

79. Finally, the Special Rapporteur recommends, as a priority for the Greenland Home Rule Government, that it develop and implement an adequately resourced plan of action against domestic violence in Greenland in cooperation with actors with relevant experience, such as the Ministry of Welfare and Gender Equality.

## Ecuador

### **Introduction**

During the period under review, the Independent Expert on the question of human rights and extreme poverty visited Ecuador from 10 to 15 November 2008 (please refer to document A/HRC/11/9/Add.1). The full report is available in Spanish only.

### **Conclusions and recommendations** (A/HRC/11/9/Add.1, para.109-127)

109. El Estado ecuatoriano reconoce a través de su ordenamiento jurídico la directa vinculación entre la superación de la extrema pobreza y la promoción y protección de los derechos humanos, reflejando avances tanto en materia normativa como en materia de planificación de las políticas públicas.

110. Sin perjuicio de tales avances, las graves inequidades económicas y sociales (muchas veces profundizadas por inequidades históricas entre zonas geográficas, grupos étnicos o de género) que aún persisten, los efectos de la actual crisis económica global y la reciente historia de inestabilidad politicoinstitucional son motivo de gran preocupación. En tal contexto, es fundamental el mantenimiento estricto de los compromisos establecidos sea en materia de política social, como respecto a los derechos humanos.

111. En lo relativo a los programas sociales, el Estado debe aumentar progresivamente su cobertura, calidad, disponibilidad y los mecanismos de participación. Frente a la actual coyuntura económica mundial, cobra mayor relevancia la necesidad de que el Estado asegure fuentes estables de financiamiento, a través, por ejemplo, de una mejora en el sistema fiscal y tributario que permitan asegurar ingresos para la sostenibilidad de la inversión social.

112. En este sentido, la Experta independiente desea realzar recomendaciones preliminares dirigidas a fortalecer la perspectiva de derechos humanos en la continuidad de los esfuerzos para la superación de la extrema pobreza en el país.

#### *A. Asegurar la no regresión*

113. El Estado debe evitar cualquier retroceso en el nivel de disfrute de los derechos económicos, sociales y culturales. Retrocesos injustificados serían contrarios tanto a su normativa constitucional como a las obligaciones de internacionales de derechos humanos.

114. La implementación progresiva de la gratuidad de los servicios de salud y educación debe significar también una mejora en el acceso y calidad de los servicios, así como en la participación de los usuarios.

115. Considerando que el gasto social en el país es aún reducido frente a las necesidades existentes y considerando que la actual crisis financiera global tiende a agravar especialmente la situación de los más pobres, es fundamental que se asegure al menos el mantenimiento de los compromisos en materia de atención a la población que vive en la extrema pobreza. Las metas detalladas en el Plan de Desarrollo Humano y en la Agenda Social deben ser tomadas como referencias en la evaluación del cumplimiento del Estado con relación a las obligaciones de derechos humanos.

#### *B. Asegurar la aplicabilidad directa de los derechos*

116. El Estado debe reforzar medidas destinadas a poner en la práctica la aplicabilidad directa y justiciabilidad de todos los derechos humanos. Esto requiere intensificar los esfuerzos de eliminación de barreras al acceso a la justicia y a otras instancias de exigibilidad, por parte de las personas que viven en pobreza. Asimismo, se debe invertir en medidas concretas para que las personas más vulnerables conozcan sus derechos y exista una capacitación de los operadores jurídicos. Para ello se han de realizar actividades dirigidas a la creación de una masa crítica de profesionales que ayuden a impulsar la vigilancia, operatividad y respeto de los derechos económicos, sociales y culturales.

117. Asimismo, es preciso el fortalecimiento de la Defensoría del Pueblo para que desempeñe un papel importante en la protección de los derechos económicos, sociales y culturales y aumente su trabajo en temas de pobreza en general.

*C. Accesibilidad de los programas de protección e inclusión social para los grupos que viven en extrema pobreza*

118. El Estado debe redoblar sus esfuerzos para asegurar que las acciones a favor de las personas que viven en extrema pobreza sean priorizadas y que no existan barreras administrativas, económicas, culturales o de otra índole para su acceso a los programas de protección e inclusión social.

119. En ese sentido, la Experta independiente destaca la necesidad de asegurar la adecuación de los programas a distintos grupos etarios y contextos geográficos, étnicos, de género y culturales. En especial, es importante asegurar la adaptación de los programas a las necesidades de las diversas comunidades, pueblos y nacionalidades del Ecuador. Se debe también mejorar la base de información para la elaboración y evaluación de políticas públicas, asegurar su actualización periódica y el monitoreo independiente y continuo de políticas públicas.

*D. Fortalecer las instancias de participación social, especialmente de los grupos más vulnerables*

120. El Estado debe seguir fortaleciendo las instancias de participación de la población en los programas sociales, enfatizando en especial la creación de mecanismos para facilitar la movilización de las personas que viven en extrema pobreza.

121. Especialmente importante es hacer efectiva la participación de las comunidades, pueblos y nacionalidades y el pleno respeto de las normas constitucionales y los estándares internacionales.

122. Los procesos participativos deben ser institucionalizados y deben tomar en cuenta las estructuras de poder existente. Se deben tomar medidas específicas para superar los obstáculos que enfrentan ciertos grupos para lograr una participación efectiva, por ejemplo a través de la capacitación en la perspectiva de género.

*E. Fortalecer los mecanismos de disseminación de información y rendición de cuentas*

123. El Estado debe asegurar la constante disseminación de información sobre los programas de protección social en forma accesible, principalmente a los destinatarios de tales programas. En el mismo sentido, el Estado debe seguir fortaleciendo los mecanismos de rendición de cuentas accesibles a la población en general y a quienes viven en extrema pobreza en particular (considerando las conocidas barreras culturales, de género, físicas o geográficas). En particular, se deben establecer mecanismos de evaluación de impacto de los programas sociales como el BDH en relación con los diferentes sectores de la población beneficiaria.

*F. Fortalecer las políticas de protección social, especialmente el BDH, para universalizar el derecho a la seguridad social*

124. El Estado debe seguir articulando las distintas líneas de acción en materia de protección social al cumplimiento de las normas de derechos humanos. El BDH, principal programa de protección social, parece jugar actualmente un papel importante aliviando algunas de las urgentes necesidades de personas que viven en extrema pobreza y que se encuentran en su gran mayoría excluidas de cualquier sistema de seguridad social. El programa BDH, por sí sólo no garantiza el disfrute del derecho a un nivel de vida adecuado ni el derecho a la seguridad social. Este programa no sustituye la obligación del Estado de asegurar el acceso universal al derecho a la seguridad social.

125. Para asegurar resultados positivos del programa BDH en relación con el disfrute de los derechos humanos de la población que vive en extrema pobreza, mayores esfuerzos deben realizarse para integrar y

coordinar el programa con una serie de políticas sociales, en especial aquellas que aseguren la prestación de servicios públicos de calidad, con pertinencia cultural y de género, en todo el país.

*G. Adecuación del BDH al pleno respeto de los estándares de derechos humanos*

126. El Estado debe evaluar que el diseño, implementación y evaluación del programa tenga debida cuenta de los estándares de derechos humanos. En particular, la Experta independiente recomienda que se realicen los estudios necesarios para asegurar que el control de la corresponsabilidad no genere ningún impacto negativo en el disfrute de los derechos humanos de las personas que viven en extrema pobreza.

127. Junto con continuar mejorando la accesibilidad, adaptabilidad, transparencia, acceso a la información, rendición de cuentas, participación y enfoque de género del programa, en las formas descritas por el presente informe, la Experta independiente reconoce los logros alcanzados y recomienda que los mismos estándares sean aplicados a otros programas sociales.

## Egypt

### Introduction

During the period under review, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation visited Egypt from 21-28 June 2009. The preliminary note on this visit (please refer to document A/HRC/12/24/Add.2) did not provide detailed conclusions and recommendations. Excerpts provided below are some of the issues that the preliminary note highlights.

### Conclusions and recommendations (A/HRC/12/24/Add.2, para.19-20)

19. The commitment of the Government to implement its human rights obligations related to access to safe drinking water and sanitation is commendable, and the independent expert is confident that going forward, the Government will dedicate the same level of energy and efforts to address the remaining challenges. In this regard, she offers the following preliminary recommendations, pending the submission of her final report:

(a) The Government should consecrate water and sanitation as human rights explicitly in their legislation, including in the draft water law currently under consideration. Furthermore, the Government should use the international human rights framework as a guide for the content of legislation and policies related to water and sanitation, in particular including aspects relating to quality, accessibility, affordability, availability, acceptability, non-discrimination, the right to information and participation, and accountability;

(b) The Government should consistently address water and sanitation in an integrated manner. In particular, the Government should prioritize the extension of access to water and sanitation to the household level. The Government should provide financial assistance for connecting households where people are unable to pay. The revolving fund currently utilized in Qena is a good practice which should be replicated in other parts of the country;

(c) The Government should pay particular attention and prioritize access to safe drinking water and sanitation for those living in rural areas, those living in informal settlements, and the poor. The Government must respect, protect and fulfil the human rights concerning water and sanitation for these people. The independent expert further urges United Nations agencies to become active on these issues, and particularly recommends that UNICEF, in cooperation with the Government, expands its activities to informal settlements. Furthermore, targeted programmes and policies should be developed to ensure that the poor are able to enjoy access to drinking water and sanitation that is affordable;

(d) The Government must devote attention to upgrading old networks to ensure that drinking water is not contaminated and enforce laws against polluting water sources;

(e) The independent expert encourages the authorities to extend regular and comprehensive water quality tests across the country;

(f) The authorities must also ensure that independent complaint mechanisms are accessible and available to all persons;

(g) The authorities should make public and easily accessible information regarding the water and wastewater sectors. In particular, all results of analyses of water quality carried out should be made available to the public;

(h) The authorities should also ensure that affected communities are able to participate in the design, implementation and monitoring of water and sanitation services in a meaningful and active way.

20. In designing new pricing policies, or in considering the granting of concessions to private companies, the independent expert reminds the Government that is obliged to establish regulations to ensure that private or semi-private entities do not infringe human rights. In this regard, the independent expert emphasizes the importance of an independent regulatory body to oversee the actions of all actors in the water and wastewater sectors.

## Equatorial Guinea

### Introduction

During the period under review, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Equatorial Guinea from 9 to 18 November 2008. The preliminary note on this visit (please refer to document A/HRC/10/44/Add.1) did not provide detailed conclusions and recommendations. Excerpts provided below are some of the issues that the preliminary note highlights.

### Conclusions and recommendations (A/HRC/10/44/Add.1, para.18-20)

18. In order for Equatorial Guinea to comply with its obligations under both international human rights law and its Constitution, it must undertake a comprehensive reform of its institutions and judicial system, involving the establishment of law enforcement bodies based on the rule of law, an independent judiciary and effective mechanisms for monitoring and ensuring transparency.

19. In addition to the foregoing, a number of steps should be taken in the immediate future to address the most urgent human rights concerns:

(a) Implement the recommendations contained in the report on the 2007 visit of the Working Group on Arbitrary Detention (WGAD) to Equatorial Guinea (A/HRC/7/4/Add.3, para.100), notably that the Government should: put an immediate end to the practice of secret detentions; revise the national criminal law framework, including with regard to making guarantees of habeas corpus effective; reform the judiciary with a view to complying with the international instruments to which Equatorial Guinea is a State party; and allow civil society organizations to function independently;

(b) Strictly separate women and minors from adult men in all places of detention;

(c) Introduce proper registers in police detention facilities (to some extent the gendarmerie registers can serve as an example) and maintain proper registers in prisons; issue a transparent set of rules allowing for regular family visits in all places of detention; make minimal use of solitary confinement (see also A/63/175, paras.77-85 and annex) and refrain from using leg irons;

(d) Improve conditions in police and gendarmerie detention facilities; in particular by providing food and drinking water and ensuring that detainees have access to medical care as well as toilets and sanitary facilities;

(e) With regard to foreigners, the Special Rapporteur underscores the recommendation of the Working Group on Arbitrary Detention to avoid their detention where possible, and to guarantee them all the rights recognized to persons deprived of liberty by international instruments, including the right to communicate with their respective consulates.

20. As for the international community, the Special Rapporteur notes that, as a result of the discovery of considerable oil reserves on Equatorial Guinean territory, many transnational corporations are operating in the country. In addition, a number of bilateral and multilateral donors have technical assistance programmes under way, including in the areas of law enforcement and the administration of justice. The Special Rapporteur calls on all the international actors present in the country, including transnational corporations, to take note of his assessment that torture is systematically practised by the police, and to ensure that, in their projects and initiatives, they do not become accomplices to violations of the prohibition of torture and ill-treatment.<sup>8</sup>

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<sup>8</sup> On the question of complicity see for example the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises A/HRC/8/5, in particular paragraphs 73-81.



## Estonia

### Introduction

During the period under review, the Special Rapporteur on the sale of children, child prostitution and child pornography visited Estonia from 20 to 24 October 2008 (please refer to document A/HRC/12/23/Add.2).

### Conclusions and recommendations (A/HRC/12/23/Add.2, para.81-101)

81. The Special Rapporteur notes a significant political commitment in Estonia to prioritize the rights of the child. While the number of reported cases of child prostitution and child pornography is low, the Special Rapporteur is of the view that vigilance is required and efforts should be directed towards prevention. In this regard, concrete actions must be implemented, including the adoption of amended legislation on the rights of the child, efficient training of police, particularly in detecting cases of sexual exploitation of children and online child pornography, training of judges in the rights of the child, and strengthening of the non-governmental and civil society sector.

82. The Special Rapporteur recalls that preventing and combating these phenomena are directly linked to the capacity of a society to adopt a holistic approach to the fundamental rights of children, paving the way for the implementation of social policies which favour children, youth and the family and the elaboration of creative and innovative responses from the public and the private sectors.

83. In this regard, the Special Rapporteur makes the following recommendations to the Government of Estonia.

84. Regarding legislation, the Special Rapporteur recommends:

- (a) That the definition of “child pornography” be amended in accordance with the Optional Protocol;
- (b) That there be no distinction based on the age of the person depicted in either pornographic or erotic works; the age should be 18 years in either case;
- (c) That child victims of the offences covered by the Optional Protocol should not, as such, be either criminalized or penalized and that all possible measures should be taken to avoid their stigmatization and social marginalization, consistent with various recommendations of the Committee on the Rights of the Child. Such action may decrease the level of shame/fear in children reporting cases;
- (d) That Estonian law clearly stipulate that a child under 18 years of age, irrespective of the legal age of consent to sexual activity, is unable to consent to any form of sexual exploitation, including child pornography and child prostitution;
- (e) That the law be amended to specifically define and criminalize trafficking in children for sexual purposes in accordance with the Palermo Protocol;
- (f) That pending amendments to the Child Protection Act and the Social Welfare Act be adopted, and that the process of adoption of the Law on Social Protection and the Family Law Act be prioritized;
- (g) That Estonia ensure effective awareness-raising about legislation on the rights of the child, including training;
- (h) That there are prompt investigations and judicial procedures in all matters related to children.

85. The Special Rapporteur also recommends that the participation of children be strengthened on all issues concerning them, and that their views be given due weight.

86. Adequate training should be provided for combating cybercrime, particularly online child pornography, to the relevant authorities, in order to effectively detect violations.

87. The Special Rapporteur recommends that Internet service providers and telecommunications companies be encouraged to become involved in initiatives to combat and prevent online child pornography.

88. All programmes and policies related to child protection should be available throughout the territory of Estonia in an equitable manner. Human and financial resources available to such programmes should also be strengthened. Birth registration should also be guaranteed for all children.
89. The Special Rapporteur recommends the strengthening of complaints mechanisms for children, including the establishment of an ombudsman for children in accordance with the Paris Principles, and that such mechanisms be available to children throughout the territory of Estonia.
90. Non-governmental organizations should be strengthened with qualified human resources as well as sufficient funding, including through exploring opportunities for obtaining funding from the private sector.
91. In cases where the Government tasks non-governmental organizations with implementing child protection programmes at the local level, detailed partnership agreements should be undertaken between the Government and non-governmental organizations which recall the respective undertakings of the parties, detailed actions, expected outcomes, follow-up and evaluation modalities, as well as the allocated budget.
92. The Special Rapporteur encourages the Government of Estonia to consider engaging the private sector for fundraising and programmatic support on issues related to the protection of the rights of the child.
93. The Special Rapporteur welcomes awareness-raising and prevention programmes already in place. She urges that they be continued over the longer term, and that they be targeted not only at children, but also at parents and the general public in order to promote attitudes and behaviour based on respect for dignity and physical and moral integrity. The Special Rapporteur also urges that sexual education programmes be strengthened.
94. Control and supervision of structures and programmes should be strengthened so that the quality of services provided as well as the sustainability of these projects are ensured. Proper follow-up of the results of such structures and programmes must also be provided for and ensured. A child-rights approach must be integral to all implemented programmes.
95. Standardized and centralized information-gathering should be strengthened, including by increasing efforts in terms of disaggregating data by sex, age, type of violation and measures taken, as well as by harmonizing methods of gathering and processing data.
96. The Special Rapporteur also encourages the Government of Estonia to undertake analyses and studies on the forms, factors and trends in abuse, violence against and exploitation of children.
97. Estonia should continue to strengthen and increase the efficiency of and cooperation between the various institutional mechanisms and entities in monitoring implementation of the Convention on the Rights of the Child and the Optional Protocol, including between the national and local levels.
98. The Special Rapporteur recommends that relevant Government departments, in cooperation with the non-governmental sector, prepare annual reports on the situation of children for distribution and discussion.
99. The media should be trained in the ethical treatment of cases of the sale of children, child prostitution and child pornography, and in their role in awareness-raising on the issue.
100. International and regional cooperation should be continued and strengthened where necessary in order to effectively combat and prevent child sex tourism and online child pornography.
101. In the light of the current financial crisis, the Government of Estonia should make all possible efforts to ensure that financing of child protection policies and programmes is prioritized.

## Georgia

### Introduction

During the period under review, the Representative of the Secretary-General on the human rights of internally displaced persons visited Georgia from 1 to 4 October 2008 (please refer to document A/HRC/10/13/Add.2).

### Conclusions and recommendations (A/HRC/10/13/Add.2, para.57-71)

57. The Representative of the Secretary-General on the human rights of internally displaced persons acknowledges the substantial achievements of the Government but believes that further efforts are required. He reiterates his desire to continue his dialogue with the Government, and specifically, to cooperate in the search for durable and equitable solutions for all internally displaced persons (IDPs) in Georgia. In this spirit, he makes the following conclusions and recommendations.

58. The main problem encountered by IDPs in Georgia continues to be the absence of political solutions to regional conflicts, as observed in the Representative's previous report and which remains a key concern, as evidenced by the new displacement of some 133,000 persons within Georgia, of whom an estimated 37,600 will not be able to return in the foreseeable future.

59. The Representative calls on all parties to take all necessary steps to ensure persons displaced by the recent and past conflicts are able to enjoy their right to return voluntarily to their former homes in safety and dignity, and to guarantee recovery of their property and possessions. Where such recovery is not possible, they should obtain appropriate compensation or another form of just reparation

60. IDPs have the right to freely choose whether they want to return, integrate locally or resettle in another part of the country. The Representative welcomes the recognition of this right by Government authorities and the policy shift in accordance with it. He urges relevant authorities to raise awareness of and promote this right so as to render the choice meaningful for IDPs and to create economic opportunities allowing IDPs to sustain themselves, irrespective of their choice as regards durable solutions. Moreover, protection of IDPs' housing, land and property rights is an essential component of durable solutions. IDPs are entitled to restitution or compensation for their property, regardless of whether they choose to return, integrate locally or resettle.

61. The Representative remains concerned about reports that in some areas of return adjacent to the Tskhinvali region/South Ossetia a certain degree of insecurity persists. He recommends that the Government of Georgia:

- (a) Take all required steps to ensure that the conditions for sustainable return are created, which would allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence. This includes ensuring the physical safety and security of the returnee population and local residents, guaranteeing law and order in all affected areas and ensuring that the physical and material conditions required for return are established through humanitarian assistance;
- (b) Implement demining as well as mine-awareness programmes;
- (c) Ensure effective monitoring of the protection of human rights of internally displaced persons and returnees.

62. The Representative commends the Government of Georgia for its decision to provide durable solutions for those IDPs who are unlikely to be able to return in the foreseeable future. However, he is concerned at the almost exclusive focus on infrastructure. He recommends that the Government develop a comprehensive integration policy which would encompass the whole range of civil, cultural, economic, political and social rights of IDPs. Such policies would not only address the question of accommodation, but would also facilitate access to education and health care, and would ensure the creation of economic opportunities, allowing IDPs to sustain themselves. Moreover, full participation of all segments of the internally displaced population in the planning and management of the resettlement plan should be guaranteed.

63. The Representative recalls the voluntary nature of resettlement or return and emphasizes that resettlement opportunities shall be offered in a non-discriminatory manner, giving priority to vulnerable cases. IDPs shall be able to make a well-informed choice about durable solutions offered to them.

64. The Representative takes note with satisfaction of the adoption, in late July 2008, of the Action Plan to implement decree No. 47 of the Government of Georgia “On Approving of the State Strategy for Internally Displaced Persons - Persecuted” which foresees measures aimed at integrating IDPs into mainstream society, in particular by providing them with permanent housing or vouchers to acquire such housing. While welcoming the shift in Government policy away from considering local reintegration and return to be mutually exclusive, the Representative continues to be concerned about the continued lack of integration of the “old” IDPs. The rights of this group of IDPs need to be ensured in tandem with responding to the new group of internally displaced on a non-discriminatory basis. The Government should ensure that a holistic approach towards all IDPs is developed and implemented.

65. The Representative recommends that the revision and implementation of the Action Plan for Internally Displaced Persons adopted in July 2008 - with amendments to account for the newly displaced population - is given absolute priority by the Government. He welcomes the adoption of decrees No. 854 of 4 December 2008 and No. 4 of 12 January 2009, both of which are aimed at accelerating the finalization of the process of revising the Action Plan under the leadership of the Ministry of Refugees and Accommodation, so as to swiftly move to its implementation.

66. Particular attention should be paid to vulnerable groups among the displaced to ensure that they are able to fully enjoy their rights. Where required, the implementation should provide for humanitarian assistance to the most vulnerable displaced persons and find durable solutions for those who may not be able to live on their own, such as elderly persons without family support.

67. The issue of formal recognition of the newly displaced as IDPs under relevant national legislation and the associated social benefits and legal protection mechanisms linked to this status should be addressed, particularly as regards housing and security of tenure, as well as protection from forceful eviction from collective centres. The Representative welcomes the information provided by the Government, indicating that persons displaced as a result of the August 2008 hostilities will be granted IDP status during the first quarter of 2009.

68. As regards the immediate response to the humanitarian emergency, the Representative encourages the authorities to evaluate the lessons learned and to strengthen, with the support of the international community, its capacity to efficiently address future situations of internal displacement that may be caused by armed conflict but also by other events including natural and man-made disasters.

69. The Representative deplores the fact that humanitarian access has become a question of political differences between the relevant parties. He is deeply concerned at provisions in the Georgian Law on the Occupied Territories which may restrict access to all areas by humanitarian actors. He regrets that the current policies of the parties to the conflict have prevented him from conducting the planned visit to the Tskhinvali region/South Ossetia. As indicated previously, he intends to conduct this part of the mission as soon as possible.

70. The Representative urges all parties to agree on a monitoring mechanism to ensure the protection of the human rights of the displaced population in all conflict-affected areas. As a first step, unimpeded access to all conflict-affected areas should be granted to humanitarian actors so that they may reach internally displaced persons and other civilians at risk without further delay, and to refrain from any steps that may further impede such access. In this context, the Representative refers to the decision of the International Court of Justice, in which the Court indicated as one of the provisional measures that “both parties shall facilitate, and refrain from placing any impediments to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination”.<sup>9</sup>

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<sup>9</sup> See footnote 17.

71. The Representative acknowledges the prompt humanitarian response by the international community and the work done by international humanitarian agencies and NGOs which has contributed to the prevention of casualties caused by displacement. The Representative recommends that the United Nations, humanitarian and development organizations and donors:

- (a) Continue to support the Government of Georgia in meeting its primary responsibility to protect and assist IDPs;
- (b) Continue to support capacity-building within the Government;
- (c) Continue to provide support and commit resources with a view to addressing both the acute humanitarian needs of the newly displaced and the requirement to reach durable solutions for both the “old” and newly displaced populations, and more specifically to implement all the components of the Government’s new Action Plan for Internally Displaced Persons. This would restore hope and dignity for a part of the Georgian population that has been marginalized for too long. In this connection, the Representative urges the donor community to ensure in particular support for durable solutions for IDPs, with a clear protection component.

## Greece

### Introduction

During the period under review, the Independent Expert on minority issues visited Greece from 8 to 16 September 2008 (please refer to document A/HRC/10/11/Add.3).

### Conclusions and recommendations (A/HRC/10/11/Add.3, para.80-104)

80. The Independent Expert notes the history of turbulent inter-State relations, conflict and bi-lateral treaties between Greece and her immediate neighbors. Such factors continue to exert influence on minority issues in Greece. However, the Independent Expert is concerned with matters solely within the domestic jurisdiction of the Greek government relating to its treatment of minorities and disadvantaged groups within Greece. This report has focused on the degree to which legislation, policy and practice fulfill obligations under international human rights law, including minority rights, which take precedent over bi-lateral treaties and agreements.

81. The Greek government's interpretation of the term "minorities" is too restrictive to meet current standards: it focuses on the historical understanding of "national minorities" created by the dissolution of empires or agreements concluded at the end of wars; the so-called Minority Treaties. This historical paradigm limits the definition to those communities identified in specific bi-lateral treaties that may also delineate the obligations to the beneficiary community, in some cases tying those benefits to reciprocal arrangements for kinship communities in the other state. Treatment of the identified minorities, therefore, is a matter of inter-state treaty relations. Greece does not recognize the minority status of other communities, stating that those claims are unsubstantiated and politically motivated. To some degree, however, the government seems concerned that such recognition would *ipso facto* implicate the foreign policy of the Greek state toward a neighboring state.

82. One also senses an interest in promoting a singular national identity. This approach may leave little room for diversity. It can contribute to a climate in which citizens who wish to freely express their ethnic identities face government blockages and in some instances, intimidation from other individuals or groups. In the northern part of the country some people expressed their view that the term "minority" implies "foreign." Some consider those who want to identify as a person belonging to a minority ethnic group to be conspirators against the interest of the Greek state.

83. Greece recognizes only one minority that is the Muslim Religious Minority in Western Thrace, which is protected by the terms and protocols of the 1923 Treaty of Lausanne which also provides reciprocally for the protection of the Greek Orthodox minority living in Turkey. Matters relating to the Muslim minority and the full observance and implementation of the Treaty of Lausanne, are handled by the Ministry of Foreign Affairs. While members of the Muslim minority are fully citizens of Greece, Turkey is allowed to have a Consulate in the region of Western Thrace and to involve itself in matters relating to the Muslim minority relevant to the Treaty of Lausanne.

84. Greece does not recognize differing ethnic or linguistic minorities, although it acknowledges that groups, like the Roma, are disadvantaged or vulnerable groups. So, Roma (those who are not Muslims), Muslims who are not from Western Thrace, those who claim a Macedonian ethnicity and more recent but settled immigrant communities are limited with respect to the full enjoyment of their rights of self-identification and the particular enhanced protections that they may be due as minorities. Muslims in Western Thrace face limitations on the full enjoyment of their right to have their Turkish ethnicity acknowledged. Further, those who identify as belonging to an ethnic Macedonian minority face social pressures and a challenge to their motives by the government. Associations have been denied registration because their desired name includes the words "Turkish" or "Macedonian." Their rights to freedom of expression and freedom of association as protected under Article 19 and Article 22 of the ICCPR respectively have been infringed.

85. In both Western Thrace and the region of Central and West Macedonia, the debate over issues of recognized identities has been contentious. Tensions persist and there have been credible reports of intimidation.

86. While noting the historical origins of the Greek government's obligations toward the Muslim minority in Western Thrace and the political history of the Balkans, the Independent Expert urges Greece to consider its obligations with respect to minority populations as arising within the post-1945 legal framework of modern human rights treaties and jurisprudence based on the principle that protection of human rights and fundamental freedoms, including those of persons belonging to minorities, is the responsibility of the State in which the persons and/or minority groups reside. These rights are universal and are elaborated in multi-lateral treaties and other documents that constitute core aspects of human rights law, including minority rights.<sup>10</sup> In this regard, states should no longer be guided merely by bi-lateral agreements with specific countries, although within the context of respect for the rights of non-discrimination and equality before the law, bi-lateral arrangements could offer enhanced entitlements over the minimum obligations.

87. In the modern paradigm, while minority issues are a legitimate interest of the international community, they should not be seen as tied to or implicating specific inter-state relations that may threaten the principle of territorial integrity. A determination that a certain group should receive the protections due to minorities does not carry implications regarding inter-state relations.<sup>11</sup> Minorities are constituent groups fully within the Greek society - not a foreign element.

88. The absence of formal recognition by the state of a particular societal group as constituting "a minority" is not conclusive.<sup>12</sup> Rather, the existence of a group to which a state owes minority protections is a matter of objective facts and exercise of the right of self-identification by persons belonging to the group.<sup>13</sup> A number of criteria have been used in the past for e.g. a distinct shared religion, a language or distinctive dialect, race or ethnicity, cultural expressions, or a common national heritage. The Permanent Court of International Justice in the *Greco-Bulgarian* case made reference to a group of people "united in a sentiment of solidarity."

89. Further, persons belonging to minority groups also enjoy all other civil, political, economic, social and cultural rights, including the rights to non-discrimination and equality before the law. But full protection of those rights is not a substitute for protection of their minority rights.

90. The government should retreat from the dispute over whether there is a Macedonian minority or a Turkish minority and place its full focus on protecting the rights to self-identification, freedom of expression and freedom of association of those communities. The Greek government should comply with the judgments of the European Court on Human Rights that associations should be allowed to use the words Macedonian or Turkish in their names and to freely express their ethnic identities. Those associations denied in the past must be given official registration promptly. Their further rights to minority protections must be respected as elaborated in the Declaration on Minorities and the core international human rights treaties.

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<sup>10</sup> See, among others, the Helsinki Final Act (Principle VII, para.4), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "ECHR") (Article 1), the International Convention on the Elimination of Racial Discrimination, and with regard to minorities in particular, in the 1966 UN International Covenant on Civil and Political Rights (hereinafter: "ICCPR") (Article 27), the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, (Article 1(1)), the CSCE Copenhagen Document (paragraphs 33(1) and 36(2)) and the FCNM (Article 1).

<sup>11</sup> See the Bolzano/Bolzen Recommendations on National Minorities in Inter-State Relations & Explanatory Note, June, 2008; [www.OSCE-hcnm.org](http://www.OSCE-hcnm.org).

<sup>12</sup> See Hurst Hannum, "The Concept and Definition of Minorities," *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, Ed. Marc Weller, University Press, 2007, p.49.

<sup>13</sup> See article 27 of the ICCPR; General Recommendation \_\_\_ of the HRC; The Declaration on Minorities; ICERD and CERD Recommendation VIII, 1990 and XXIV, 1998.

91. The government should guarantee the right to personal security and freedom from intimidation or discriminatory actions by private or public actors on the grounds of the exercise of their right to self-identification.
92. The government is commended for the positive practices that it has adopted with respect to improving the quality of education available for the Muslim minority in Western Thrace, including in minority schools and the guarantee that 0.5% of university entrants - a quota which entered into force in 1996 - will be reserved for students from the Muslim minority.
93. Those efforts should be strengthened by providing for bi-lingual instruction in the pre-school level, which is now mandatory nationally; by guaranteeing that the quality of educational outcomes for those students who choose to go to the minority schools is comparable to graduates from the non-minority schools; ensuring that the teaching staff in the minority schools have the same training and qualifications as teachers in the non-minority schools and that the University of Athens special intervention program to upgrade the minority schools in Western Thrace gets sufficient funding.
94. The government should quickly implement its program of positive measures to ensure that 0.5% of all government jobs are filled by persons belonging to the Muslim minority. A similar program of positive measures should also be put in place with respect to other under-represented groups.
95. The appointment by government of religious officials, such as Muftis, infringes on the right of persons belonging to the Muslim minority to effectively participate in the decision-making processes that affect their daily lives. It is also an infringement on freedom of religion. On the other hand, it is also not an option to impose Sharia Law in a fashion that violates the right to equality of women guaranteed in the constitution and under international law. Religious leaders should be chosen by their religious communities, but must be restricted to religious duties that do not infringe fundamental rights.
96. With respect to the Roma population the government is displaying admirable good will in developing positive policies coordinated at the inter-Ministerial level through the “Integrated Action Programme on Roma.” While some of those policies may raise questions of viability or appropriateness at a conceptual level, significant problems of implementation exist at the local level.
97. Many Roma remain in squalid living conditions with their children either in segregated schools or unable to access educational opportunities due to their identity. Roma face severe impediments to their rights to housing and against forced evictions. Their access to public services - from public transportation to clean drinking water - is denied by discriminatory actions by local officials. Discrimination in employment circumscribes their job possibilities to the most menial and dirty in the informal sector. The European Court of Human Rights has recently issued judgments against Greece in cases where the Court found failures to grant to Roma access to justice as defined by international standards and failure to guarantee the right of Roma children not to be unlawfully segregated into inferior schools.
98. The government must ensure that national policies are not subverted or defied by local authorities who find it more convenient to be responsive to local prejudices. With respect to international legal obligations including rights of non-discrimination and equality, domestic constitutional arrangements such as decentralized authority or devolution of powers, do not mitigate state responsibility for violations of human rights. The government should consider models which recognize the principle of national government pre-emption of local authority in matters of compelling state interest such as fundamental rights. Alternative models deny funding to non-compliant localities. The European Commission against Racism and Intolerance has recommended sanctions “on municipal councilors who make racist remarks or do not comply with the regulations and decisions that bind them.” The government must display a stern political will that localities have no option other than to comply with positive national policies. National ministries must then effectively monitor implementation on the local level.
99. The government must take steps immediately to guarantee that universal standards of equality before the law, due process and the right to speedy trials are respected fully with regard to Roma defendants and litigants.



100. The unique issues faced by women from the Roma and the “Muslim” minority are failing to gain the special focus they require. Roma and Muslim women suffer disproportionately high levels of illiteracy and unemployment and are often subjected to norms incompatible with the constitution and international standards - like child marriages and denial of inheritance rights under Sharia Law. Additionally, gender-based violence is not being effectively addressed. Efforts in this regards must be well-grounded in a consultative process with the affected women.

101. The Greek civil courts must exercise effective monitoring of Mufti judicial decisions to guarantee faithful adherence to the guarantees in constitutional and international human rights law.

102. The Government is urged to comply fully with the CEDAW Committee recommendation to “take effective measures to eliminate discrimination against minority women, including awareness-raising programmes, to sensitize public opinion at large, and particularly the police, on the issue of minority women. It also urges the State party to address the forms of discrimination, including with regard to access to education, by minority women through its legal, administrative and welfare systems.

103. The history of the Greek state and the majority conception of “the national identity” are tightly intertwined with the Greek Orthodox religion. Minority religions therefore have had to struggle to establish and maintain sufficient space for the full exercise of their identities in the civic sphere. Recent positive steps have been taken by the government. However, issues persist with the erection of houses of worship, burial practices and sites and general biases in public attitudes, including incidents of anti-Semitism. Bias also exists within the law to the extent that only the Greek Orthodox and the Jewish religions are recognized as having distinct legal personality as religious entities. The other religions are governed by the laws relating to secular associations giving rise to issues of equality with respect to protection of the right to freedom of religion.

104. The minority religions should be governed by a legal framework that recognizes their religious character and grants them legal personality appropriate to that status. All religions should have equal recognition under the law. Additionally, the law banning proselytizing, which has not had recent application, should be formally revoked.

## Guatemala

### Introduction

During 2009, Guatemala was visited by five mandate holders. The Special Rapporteur on human rights defenders visited from 18 to 22 February 2008 (please refer to document A/HRC/10/12/Add.3). The Special Rapporteur on the human rights of migrants visited the country from 24 to 28 March 2008 (please refer to document A/HRC/11/7/Add.3, full report available in Spanish only). The Special Rapporteur on the right to education visited Guatemala from 20 to 28 July 2008 (please refer to document A/HRC/11/8/Add.3). The Special Rapporteur on the independence of judges and lawyers visited from 26 to 30 January 2009 (please refer to document A/HRC/11/41/Add.3). The Special Rapporteur on extrajudicial, summary or arbitrary executions prepared a follow-up report to his visit to Guatemala from 21-25 August 2006 (A/HRC/4/20/Add.2). The follow-up report was compiled based on information provided by the Government, as well as through consultation with domestic and international civil society, and by reference to publicly available reports and materials.

### Conclusions and recommendations of the Special Rapporteur on human rights defenders (A/HRC/10/12/Add.3, para.86-104)

86. The Special Representative is deeply concerned at the deterioration in the security situation of human rights defenders and the pervasive impunity affecting the vital functions of democracy and the rule of law. She considers that the situation of human rights defenders and of human rights more broadly is unlikely to improve without a clear turning point on impunity. For this reason, a number of her recommendations go beyond the specific situation of human rights defenders.

87. The Special Representative has recognized some progress since her first visit in 2002, namely:

- (a) The well organized community of human rights defenders and their ability to establish and coordinate mechanisms for self-protection, including the NGO Unit for the Protection of Human Rights Defenders;
- (b) The achievements of the Office of the Ombudsperson in addressing complaints and in gaining people's trust;
- (c) The establishment of the International Commission against Impunity in Guatemala (CICIG), tasked with the investigation of crimes allegedly committed by illegal security forces and clandestine security organizations.

Recommendations for the consideration of the Government

88. Turn the commitment to human rights into a political agenda permeating Government action with specific, measurable, achievable, realistic and time-bound (SMART) objectives on the achievement of which the Government holds itself accountable.

89. Adopt a policy on the protection of human rights defenders in consultation with human rights defenders and relevant stakeholders. Report on its implementation, including on the programme of protection measures, to relevant human rights mechanisms, such as the Special Rapporteur on human rights defenders.

90. Take concrete and visible steps to give political recognition and legitimacy to the work of human rights defenders. This can be done by firmly condemning attacks against defenders and by acknowledging the importance of their work.

91. Institutionalize consultation processes between the Government and civil society organizations on relevant areas of Government action. For human rights matters, COPREDEH should ease access of civil society organizations and human rights defenders to Government structures and facilitate consultations.

92. Ensure coordination among institutions responsible for the investigation of cases, particularly between the police and the Office of the Attorney-General. The Body for the Analysis of Attacks against

Human Rights Defenders is an appropriate mechanism to this end, if all concerned institutions and organizations participate in, and contribute to, its work.

93. Undertake a comprehensive reform of measures and protocols for witness protection. The recommendations made by OHCHR in this respect can guide the reform process.<sup>14</sup> Ensure the inclusion of protection measures for human rights defenders acting as witnesses or supporting witnesses in judicial proceedings.

94. Undertake reform of the police tackling its flaws and weaknesses, including the need to gain the trust of the population. Establish a functioning oversight mechanism. The advisory services of OHCHR and other human rights actors and mechanisms should be sought to support the reform process.

95. Take measures to ensure and monitor the full collaboration of relevant institutions, particularly the Office of the Attorney-General, in the implementation of the recommendations and findings of the Ombudsperson and CICIG.

96. Provide the Institute for Public Penal Defence with protection for staff under threat and with adequate resources to carry out its important institutional mandate.

97. Provide the Ombudsperson with adequate resources and political support to maintain and process the archive of documents on past crimes and to make its information accessible. Recommendations for the consideration of the parliament, particularly the Human Rights Commission

98. Make concrete efforts to acknowledge and value the work of defenders through public statements and become a source of political and institutional support for them.

99. Institutionalize consultations with civil society and human rights organizations when drafting and debating human rights legislation.

100. Collaborate more actively with institutions with a human rights mandate, such as COPREDEH and the Ombudsperson. Recommendations for the consideration of human rights defenders

101. Strengthen networks and coalitions of defenders both within and outside the country to enhance the protection that defenders can provide to each other through these networks. Maintain an inclusive approach to the notion of “who defends human rights”. Staff members of the Institute for Public Penal Defence and some judges working on human rights cases face similar risks and attacks to those suffered by human rights organizations. Coordination of strategies with them, including on self-protection initiatives, can be of mutual benefit.

102. Seek and use all available opportunities to participate and be consulted in decision-making processes of public institutions, including approaching the Commission on Human Rights of the Congress. Recommendations for the consideration of the international community

103. Continue monitoring the situation of human rights defenders and express support for their work through, inter alia, the interventions of international and regional human rights mechanisms, the work of the OHCHR office in Guatemala, and the actions envisaged in the European Union Guidelines on human rights defenders.

104. The Special Representative welcomes the inclusion of a number of recommendations addressing the situation of human rights defenders made by member States of the Working Group on the Universal Periodic Review (UPR) of the Human Rights Council on the occasion of the review of Guatemala under this new mechanism.<sup>15</sup> While further efforts are needed to improve the quality and consistency of

<sup>14</sup> See A/HRC/7/38/Add.1, para. 72.

<sup>15</sup> See A/HRC/8/38, para. 89, recommendations 18-22, 30 and 36.

recommendations, the commitment of member States to thoroughly monitor the situation of human rights defenders in the framework of the UPR is a meaningful contribution to improve their situation.

**Conclusions** of the Special Rapporteur on the human rights of migrants (A/HRC/11/7/Add.3, para.114-120)

114. Guatemala ha sido testigo en las últimas décadas de un aumento importante de sus flujos migratorios. Aunque el Gobierno ha tomado conciencia de la dimensión e importancia de este fenómeno, aún no ha desarrollado los mecanismos necesarios para proteger de manera adecuada los derechos humanos de los migrantes, hacer frente al tráfico ilícito de migrantes, la trata de seres humanos y las redes del crimen organizado.

115. Uno de los grandes retos a los que se enfrenta el Gobierno de Guatemala es poner fin a los casos de corrupción y abusos en los que estarían involucrados funcionarios del Estado. En este sentido el Relator Especial acoge con satisfacción el reciente nombramiento del nuevo Director General y Director General Adjunto de la Policía Nacional Civil (PNC) como parte de los planes de reestructuración y fortalecimiento de la Institución policial y la lucha contra la corrupción en Guatemala.

116. El Relator Especial observa con satisfacción los esfuerzos realizados por el Estado para facilitar el regreso a sus familias de los menores migrantes no acompañados deportados de México, así como las acciones llevadas a cabo para mejorar las condiciones de los centros de detención de migrantes.

117. El Relator Especial advierte con preocupación cómo en numerosas ocasiones las autoridades migratorias y policiales desconocerían las garantías que acompañan a los procedimientos de detención, internamiento y devolución o expulsión de los migrantes, cometiéndose abusos y violaciones de derechos humanos.

118. El Relator Especial expresa su profunda preocupación ante los numerosos testimonios recibidos sobre casos de extorsión, sobornos y abusos en contra de los migrantes. No existiría un mecanismo efectivo para la presentación de denuncias de tales abusos.

119. El Relator Especial también observó con preocupación la falta de presencia consular en Guatemala de muchos de los países de origen de los migrantes que se encuentran en tránsito por el país.

120. El Relator Especial acoge con satisfacción el compromiso expresado por el Presidente de la República de Guatemala para tratar los derechos humanos de los migrantes desde una perspectiva integral. El Relator Especial considera que es crucial el diseño y puesta en práctica de una política nacional integral de atención y protección a los migrantes, la cual debería contar con la implicación de la sociedad civil.

**Recommendations** of the Special Rapporteur on the human rights of migrants (A/HRC/11/7/Add.3, para.121-138)

121. La actual Ley de Migración es una ley que contiene numerosas imprecisiones, lo que conlleva a que en numerosas ocasiones se produzcan irregularidades y abusos en contra de la población migrante. El Relator Especial invita al Gobierno a poner en marcha un proceso de armonización de la actual Ley de Migración y su Reglamento con las disposiciones previstas en los instrumentos internacionales de derechos humanos ratificados por Guatemala, en especial la Convención Internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares.

122. En la práctica se comprueba que no existe una regulación nacional integral sobre materia migratoria lo cual se traduce en una descoordinación importante entre las distintas instituciones competentes del Estado en temas migratorios. El Relator Especial insta al Estado a reforzar de manera efectiva los mecanismos de coordinación en materia de migración.

123. El Relator Especial alienta al Estado a presentar el primer informe sobre las medidas legislativas, judiciales, administrativas y de otra índole adoptadas para dar efecto a las disposiciones de la Convención Internacional sobre la protección de los derechos de todos los trabajadores migrantes y de sus familiares.

124. El Relator Especial considera que la cooperación regional es fundamental en la promoción y protección de los derechos de los migrantes. En este sentido, invita al Gobierno a mantener su participación activa en los procesos regionales existentes.

125. El Relator Especial recomienda que se intensifiquen los esfuerzos conjuntos de los países de la región en la búsqueda de acuerdos multilaterales con los países de origen y destino, que refuercen la protección de los derechos humanos de los migrantes en concordancia con lo dispuesto en la Convención Internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares.

126. El Relator Especial observa como a pesar de los esfuerzos realizados por el Estado para luchar contra la corrupción y la impunidad, éstos han mostrado ser insuficientes. Alienta al Estado a destinar los recursos financieros, materiales y humanos necesarios para la lucha contra la impunidad. En especial, el Estado debe asegurar el procesamiento de los responsables y el cumplimiento íntegro de las condenas. En este sentido, el Relator Especial acoge con satisfacción el inicio de las actividades de la Comisión Internacional contra la Impunidad en Guatemala, e insta al Estado a continuar la cooperación mantenida hasta la fecha con la Comisión.

127. El Relator Especial observa con preocupación cómo las medidas adoptadas por el Gobierno para luchar contra el tráfico ilícito de migrantes y la trata de seres humanos resultan aún insuficientes, dada la descoordinación existente entre las distintas instituciones y la falta de los recursos necesarios. El Relator Especial recomienda reforzar las instituciones y mecanismos establecidos.

128. El Relator Especial considera que el Estado debería garantizar que las víctimas de trata de personas, una vez hayan sido identificadas, no sean objeto de detención ni sean procesadas o sancionadas por el carácter irregular de su ingreso y permanencia en el país. En este sentido, es necesario fortalecer los mecanismos actuales para la lucha contra la trata de personas con el fin de que las víctimas reciban la asistencia y protección adecuada y se inicien las investigaciones que procedan contra aquellas personas responsables.

129. El Relator Especial recomienda que el Estado considere habilitar centros especiales para las víctimas de trata de personas, distintos de los centros de detención para migrantes, los cuales reúnan los requisitos necesarios para atender sus necesidades.

130. El Relator Especial constató los esfuerzos llevados a cabo por el Estado para combatir con firmeza los abusos cometidos contra los migrantes guatemaltecos que se encuentran en el exterior, y alienta al Gobierno a continuar trabajando en este sentido. El Relator Especial considera que es fundamental implementar políticas en la misma dirección respecto a la protección de los migrantes que se encuentran en tránsito en Guatemala.

131. El Relator Especial considera fundamental el establecimiento de mecanismos de denuncia ante los abusos cometidos en contra de los migrantes, efectivos y de fácil acceso, que se encuentren acompañados de sanciones efectivas.

132. El Relator Especial recomienda la creación de mecanismos de supervisión que regule el reclutamiento y las prácticas abusivas contra los trabajadores migrantes del sector agrícola y las trabajadoras del servicio doméstico que se encuentran en México.

133. El Relator Especial recomienda que se respeten y apliquen a los migrantes que se encuentran en situación de detención administrativa, los principios internacionales para la protección de todas las personas que se encuentran privadas de su libertad, respetándose el derecho de establecer comunicación con el exterior, tener acceso a un representante legal y consular, y a sus familiares, y ser informado de ser

posible en un idioma que comprenda, de los motivos de su detención y los derechos procesales que le asisten.

134. El Relator Especial insta a las autoridades a realizar las modificaciones pertinentes en su legislación nacional, con el fin de establecer un plazo máximo de detención que en ningún caso podrá ser indefinido ni tener una duración excesiva.

135. El Relator Especial constató la necesidad de reforzar la capacitación de los funcionarios de la DGM. En este sentido se insta al Estado a llevar a cabo campañas de información dirigida al personal que trabaja en cuestiones migratorias.

136. El Relator Especial recomienda prestar una atención especial a la capacitación del personal que trabaja con menores migrantes no acompañados, basada en los principios y las disposiciones de la Convención sobre los Derechos del Niño.

137. Es imprescindible que el Estado lleve a cabo campañas de sensibilización e información sobre los riesgos de la migración irregular. En este sentido, dada la falta de información sobre las garantías y derechos, los migrantes se enfrentan a una situación de gran indefensión ante posibles abusos.

138. El Relator Especial acoge con satisfacción la valiosísima labor llevada a cabo por las organizaciones de la sociedad civil, la iglesia, personalidades del mundo académico y otras instituciones, con el fin de promover el respeto de los derechos humanos de los migrantes. El Relator Especial alienta al Estado a mantener el diálogo establecido con estos interlocutores sociales, y a fortalecer su participación en los procesos de toma de decisión en materia migratoria.

**Conclusions and recommendations** of the Special Rapporteur on the right to education  
(A/HRC/11/8/Add.3, para.79-84)

79. The Special Rapporteur thanks the Government of Guatemala, civil society representatives and United Nations agencies for their cooperation in what proved to be a successful visit. The Special Rapporteur reiterates that education is the true engine of development and applauds the Government's determination in endeavouring to improve resource allocation for education, its self-criticism in recognizing the huge challenges and its resolve not to be discouraged by what is certainly an unattractive prospect. That commitment should be supported by all sectors of society, including, first and foremost, Congress. A major effort is nonetheless necessary to reach national strategic agreements that are not questioned with changes of government or municipal authorities. In this connection, the Special Rapporteur notes with concern the low level of investment in education, which is approximately 2 per cent of GDP (the lowest in the region), although the President of the Education Commission of Congress assured him that for 2009 there would be an increase for education equivalent to 0.5 per cent of GDP.

80. The Special Rapporteur noted that indigenous peoples' right to education was in practice confined to the issue of bilingualism despite the fact that plans and programmes established some years previously had incorporated culture as a substantive topic. Although the structure of the Ministry of Education includes a deputy minister's office and a directorate for intercultural bilingual education, most activities focus on the teaching of indigenous languages for students in the first three years of primary schooling only, at a very small number of State schools and solely for indigenous pupils and in a few languages, but not on promoting the study of the cultures, world views, arts or ancestral traditions of this country's first peoples.

81. The Special Rapporteur observed that existing legislation, including constitutional provisions, revealed a gulf between the law and its practical application. Constitutional principles on education must cease to be a dead letter and become everyday practice guiding concrete actions. The exclusion, discrimination and even racism which still persist in Guatemala have well-known historical roots and affect primarily indigenous populations and communities of mixed descent living in rural areas and, within them, children and young persons. In the sphere of education, these social problems have given rise to

marked disparities and imbalances in enrolment and dropout rates, which hamper the realization of the human right to education, affecting over one million children.

82. The Special Rapporteur also notes that the trend is towards privatization of education, which undermines the principle of free primary and lower secondary education, as established in international human rights instruments, and conflicts with the principles of education for all and with article 71 of the Constitution. Many families have to meet various school fees and expenses, ranging from small contributions to the payment of teachers' salaries. It is also striking to note that 80 per cent of secondary education is in the hands of private schools, which makes it impossible for thousands of families to ensure lower or upper secondary schooling for their children owing to their poverty status.

83. The Special Rapporteur could nevertheless observe progress in early childhood education coverage (48 per cent in 2006). It is encouraging to note major progress in primary enrolment, which must now be supplemented by sustained efforts to reduce the high dropout rates. Also, the conditional cash transfers programme being promoted by the Government is a scheme which is boosting education, as are the various vouchers granted both to students and to teachers. The Special Rapporteur acknowledges and appreciates these endeavours and calls upon the competent authorities to continue and expand them.

84. In the light of these conclusions, the Special Rapporteur makes the following recommendations to the Government of Guatemala:

- (a) Ratification of the Convention on the Rights of Persons with Disabilities with a view to developing the legal and institutional mechanisms for its implementation and establishing an inclusive education model;
- (b) Repeal of Governmental Decision No. 399-68, which authorizes education levies payable by families;
- (c) Creation of a legal mechanism to ensure an increase in investment in education of 0.5 per cent of GDP per annum so that the rate remains constant until it progressively reaches 6 per cent of GDP, with priority given to combating discrimination in education and promoting quality. Public oversight of this mechanism should be fostered and individuals and communities should be guaranteed the possibility of demanding it. The Special Rapporteur calls for a reform of tax policy to allow the necessary revenues to be collected so that the State can meet its education obligations;
- (d) Setting up and entry into operation as soon as possible of the National Education Council, as established under the Constitution, and of other consultative, advisory and decision-making bodies on education policies that are essential to building democratic and participatory societies. The National Education Council should receive appropriate funding so that it can progress as a body with the capacity to participate in education policymaking. It should also take over education reform monitoring under its mandate to avoid starting from scratch, commencing with an examination of Guatemala's education commitments;
- (e) Securing of national political consensus so that the State grants an adequate budget to fulfil its obligation in this regard. That budget should not be regressive and efforts should be made to reach national agreements that are not overturned with each change of government;
- (f) Promotion of the participatory design of a State policy for education that will make it possible to regulate the National Education Act on the basis of Guatemala's international obligations and the intercultural needs of the country;
- (g) Incorporation of gender mainstreaming in education policymaking to foster the inclusion of sexual and reproductive health education in the school curriculum;
- (h) Stronger involvement of the Office of the Human Rights Ombudsman in mechanisms for the enforceability and justiciability of the right to education;
- (i) Implementation of affirmative action as a matter of national urgency to promote and enhance the status of indigenous languages and cultures in order to show to all groups of society (including non-indigenous groups) the benefits of a culturally and linguistically focused education;
- (j) Establishment, within all ministerial departments, of the criteria of multiculturalism, intercultural and multilingualism in the design and implementation of projects and programmes developed at the Ministry of Education;
- (k) Mainstreaming of indigenous peoples' rights in all ministerial measures, which should make curricular activities a vehicle for affirmative action in their favour so that the specificities of

indigenous peoples are not seen as an adjunct to the basic national curriculum, in which indigenous communities do not always feel represented;

(l) Review of the role of the Office of the Deputy Minister of Intercultural Bilingual Education so that it can be accorded greater decision-making authority both in the development of curriculum policies and in the general administration of institutional processes;

(m) Ensuring of an equitable and appropriate ministerial distribution in the programming and execution of loans granted by international organizations to the national education system for the educational advancement of indigenous peoples;

(n) Support for plans to expand and strengthen State secondary and university education, with the provision of greater resources to those levels, without any reduction in funds earmarked for the lower levels, and the training of a larger number of teachers so that State education is made accessible to all. The state university (University of San Carlos) should be provided with adequate resources, as allocated to it by law, to allow the execution of programmes for the professional development of the teaching force;

(o) Improvement of school infrastructure (with priority given to the supplying of water and electricity to centres of education) since very serious challenges still exist owing to the lack of financial resources;

(p) Increase in the intercultural bilingual education budget in proportion to the population served by the 13 departmental directorates for intercultural bilingual education in 2009;

(q) Execution of the first phase of the World Programme for Human Rights Education, 16 covering public officials and members of the municipal authorities and councils, in accordance with the mandate established by the Constitution;

(r) Continued implementation of the cash transfers programme, which makes it possible to help ease the financial burden of families wishing to send their children to school. The arrangements should allow the correct identification of the beneficiary population, technical follow-up and linkage of the programme to the country's budgetary developments so that it does not become a process based on favouritism, to which end it would be necessary to improve the monitoring mechanisms;

(s) Guaranteeing of the legal, technical and administrative processes and resources necessary to achieve a genuine and effective transformation of the 13 departmental directorates for education into directorates for intercultural bilingual education;

(t) Development of direct and positive encouragement of the recruitment of bilingual teachers so that new teaching posts are assigned to serving the educational needs of indigenous communities. The Special Rapporteur also recommends that intercultural bilingual specialists be hired for the purpose of providing specialized teaching support in intercultural bilingual classes;

(u) Promotion of an indigenous-language literacy training scheme for public officials which includes at least the instrumental use of the mother tongues of peoples living in regions where they work and the development of awareness of the value of cultures. The Special Rapporteur also recommends the establishment of clear guidelines and the effective application of the intercultural bilingual education methodology in initial teacher training, in particular that offered by intercultural bilingual teacher-training colleges;

(v) Preparation of textbooks and educational materials for the Garífuna and Xinka peoples and of intercultural bilingual education support and reference materials and textbooks for lower secondary education and initial teacher training;

(w) Development of an effective care system for indigenous children who have for various reasons moved to the large cities, in particular the capital, in order to alleviate loss of identity and acculturation. To that end, the Special Rapporteur recommends the adequate provision of teachers and educational materials to enable such children to receive an education of cultural and linguistic relevance;

(x) Setting up of special care programmes for students with disabilities, with specialist teachers and materials adapted to their special needs.

**Conclusions** of the Special Rapporteur on the independence of judges and lawyers (A/HRC/11/41/Add.3, para.105-106)

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<sup>16</sup> See the Revised draft plan of action for the first phase (2005–2007) of the World Programme for Human Rights Education (A/59/525/Rev.1).



105. Múltiples factores han contribuido al estado actual de la justicia en Guatemala, entre otros, la insuficiencia de recursos, la falta de garantías para la independencia e imparcialidad del poder judicial, la inexistencia de una verdadera carrera judicial e inestabilidad en el cargo, deficiencias en la investigación criminal, falta de acceso a la justicia por varios sectores de la población y deficiente capacitación de los operadores de justicia. A ello se suma la creciente violencia e inseguridad que se vive en el país y la penetración del crimen organizado en todas las estructuras estatales, lo que conlleva una profunda desconfianza de parte de todos los sectores de la sociedad en el sistema de justicia.

106. Es necesaria la reconducción de la actividad del Estado frente a la justicia, la impunidad y la reparación de las víctimas. Deben adoptarse las medidas necesarias para fortalecer el sistema de justicia, antes de que la situación se convierta en inmanejable y que los grupos paralelos de poder se apoderen de las instituciones. Para ello, el Estado deberá tener la voluntad política para hacer las reformas requeridas y deberá contar con el apoyo de sus ciudadanos y de la comunidad internacional.

### **Recommendations** (A/HRC/11/41/Add.3, para.107-124)

107. El Relator Especial recomienda firmemente que Guatemala adopte el Estatuto de Roma de la Corte Penal Internacional y la Convención [Internacional para la protección de todas las personas contra las desapariciones forzadas](#) y adhiera al conjunto de instrumentos internacionales de derechos humanos pendientes

108. El Relator Especial considera que es necesario establecer una política unificada en materia de justicia<sup>17</sup>. El gran número de iniciativas que actúan de manera fragmentaria, aislada y desarticulada, incide de manera negativa en el desempeño del sistema de justicia en su conjunto. La creación de un ministerio de justicia que tome a su cargo las funciones clásicas de definición de las políticas públicas en materia de justicia, en especial la política criminal y criminológica, constituiría un paso importante en la lucha contra la impunidad. Un ministerio de justicia permitiría además diferenciar las funciones del OJ y del MP de las funciones de orientación de la política criminal y seguridad del Estado, las cuales, por su connotación política, le corresponden al Ejecutivo. El ministerio de justicia también podría asumir tareas que en la actualidad se encuentran dispersas en diferentes instituciones del Estado, lo que merma su efectividad. Tal es el caso de la protección brindada por el Estado a personas que son objeto de ataques, hostigamientos y amenazas, entre otros, operadores de justicia, defensores de derechos humanos, periodistas, testigos, víctimas etc. Asimismo, el ministerio podría asumir el rol de coordinación de las diferentes instancias gubernamentales que desarrollan actividades relacionadas con el sistema de justicia, lo cual permitiría llegar a acuerdos o tomar acciones que sean efectivamente implementadas. Dicho ministerio debería fortalecer los espacios de discusión en los que participen diferentes sectores de la sociedad, tales como organizaciones de la sociedad civil, académicos, etc. Finalmente, dentro del ministerio de justicia debería existir un viceministerio de derechos humanos que tenga la posibilidad de establecer un diálogo directo con todas las instancias del poder público, con el fin de que exista una política unificada en materia de derechos humanos a nivel estatal.

109. En cuanto a la elección y nombramiento de magistrados, con el fin de evitar la politización del proceso de designación e interferencias externas, debería aprobarse una ley que reglamente las comisiones de postulación y a su vez establezca los criterios para escoger a los candidatos, los cuales deben ser objetivos, basados en los méritos, las calidades y la experiencia de los candidatos, de manera que se garantice su independencia e imparcialidad; tal como ha sido establecido por diferentes órganos de protección de los derechos humanos y estándares internacionales en la materia<sup>18</sup>.

110. Una reforma en el ámbito legislativo podría terminar con la provisionalidad, por ejemplo a través de una reforma de la ley de la carrera judicial en la que se disponga la renovación automática del periodo del juez o magistrado al término de los cinco años, a menos que exista una falta grave debidamente establecida por un proceso disciplinario que respete todas las garantías de un juicio justo. Esta reforma sería el primer paso hacia la introducción progresiva de un régimen de jueces permanentes e inamovibles

<sup>17</sup> Ver E/CN.4/2002/72/Add.2, párrafo 82.

<sup>18</sup> Ver a título de ejemplo, Estatuto Ibero Americano del juez (art. 11) y A/HRC/11/41, párrafo 30.

hasta el momento de su jubilación. El Relator Especial ya se ha pronunciado en este sentido en diversas ocasiones<sup>19</sup>. En lo que concierne los funcionarios auxiliares de la justicia, debería hacerse una reforma a la legislación existente que permita establecer mecanismos que permitan una adecuada selección, evaluación y rendición de cuentas, así como una efectiva aplicación de los mismos.

111. El Relator Especial recomienda que se reforme la Ley del OJ con el fin de armonizarla con las disposiciones de la ley de carrera judicial, así como para limitar las funciones administrativas asignadas a los magistrados.

112. Con el fin de mejorar la administración de la carrera judicial, debería revisarse la actual integración y funcionamiento del Consejo de la Carrera Judicial, así como el periodo de duración de sus integrantes y su proceso de selección, para que tenga más independencia frente a la CSJ. Asimismo, deberían adoptarse medidas para que los miembros de la Junta de Disciplina Judicial tengan una mayor estabilidad en la duración de su mandato y demás medidas que permitan que la Junta esté al abrigo de intervenciones indebidas por parte de la CSJ, así como dar una mayor claridad tanto procedimental como en materia de criterios y principios aplicables, al procedimiento disciplinario.

113. Se recomienda que se fortalezca la carrera fiscal, mediante una reforma a la Ley Orgánica del MP que implemente un régimen disciplinario acorde con el debido proceso, así como un sistema de evaluación de desempeño debidamente reglamentado y orientado por criterios objetivos.

114. Es importante que la PNC establezca una sección o unidad a cargo de la investigación criminal, en calidad de cuerpo técnico de investigación<sup>20</sup>. Esta unidad deberá trabajar de manera articulada con el MP y el INACIF, evitando la duplicidad de funciones<sup>21</sup>. Para ello es necesaria que sean definidas claramente las responsabilidades de cada uno, con el fin de poner fin a la confusión de responsabilidades en la ejecución de la investigación criminal, así como el establecimiento de protocolos de procedimiento de colaboración interinstitucional e indicadores de gestión. Ello debe ir acompañado de una adecuada capacitación y de la dotación de los recursos financieros, humanos<sup>22</sup>, técnicos y científicos necesarios para ejercer las funciones asignadas. La comunidad internacional debería prestar su apoyo técnico y financiero.

115. Tanto el Gobierno como la comunidad internacional deben apoyar y fortalecer las reformas que están siendo llevadas a cabo al interior de la PNC, en especial en lo que toca a la depuración de su personal. Dicho apoyo debe traducirse en los recursos económicos, humanos, logísticos y técnicos necesarios. Es muy importante que el proceso de depuración sea llevado a cabo de manera transparente y que la sociedad civil tenga la posibilidad de participar en el mismo; así como que vaya acompañado de programas de capacitación en derechos humanos de todos los oficiales de la PNC.

116. Es necesario fortalecer el INACIF, ya que es una pieza clave en la lucha contra la impunidad. El Relator Especial hace un llamado para que se continúe prestando el apoyo necesario, en materia de recursos económicos, humanos y técnicos, de parte del Gobierno y de la comunidad internacional.

117. La CICIG debe recibir todo el apoyo tanto del Gobierno, como de la comunidad internacional. El Relator Especial hace un llamado para que la extensión del mandato aprobada por el Secretario General de

<sup>19</sup> Kirguistán (E/CN.4/2006/52/Add.3, párr. 84) y Tajikistán (E/CN.4/2006/52/Add.4, párr. 92).

<sup>20</sup> Actualmente la PNC participa en la investigación criminal como auxiliar, bajo los órdenes del MP, por medio de las unidades que conforman la Subdirección General de Investigación Criminal –División de Investigación Criminal (DINC), Centro de Recopilación, Análisis y Difusión de Información Criminal (CRADIC), División de Protección de la Escena Del Crimen (DIPEC), entre otras.

<sup>21</sup> El Relator fue informado de que existen dos proyectos de ley para crear una policía técnica de investigación criminal. El primer proyecto propone la creación de una policía de investigación criminal adscrita al MP y el segundo, al Ministerio de Gobernación. El Relator considera que en lugar de crear un cuerpo de policía judicial nuevo, sería mejor que se definan y ejecuten las funciones de las tres instituciones ya existentes: MP, PNC e INACIF y que se establezcan políticas de colaboración articulada entre las mismas.

<sup>22</sup> De más de 40.000 efectivos que deberían existir, sólo se cuenta con aproximadamente 19.000. Datos proporcionados por la dirección de la PNC. Ver también A/HRC/4/20/Add.2, párr. 44.

las Naciones Unidas se haga oficial lo más pronto posible, de manera que la CICIG tenga el tiempo de cumplir su tarea y de dejar capacidad instalada en el país.

118. Se debe fortalecer la Unidad de Delitos contra Operadores de Justicia, mediante la capacitación de su personal y el aumento de recursos humanos, técnicos y financieros. El MP deberá definir claramente las competencias de la unidad, de manera que tenga competencia sobre todos los casos de violencia en contra de operadores de justicia.

119. Es necesario consagrar como delito el tráfico de influencias, con el fin de poner fin a los actos de corrupción que se presentan en todo el sistema de justicia, en especial el MP y el OJ.

120. Se recomienda que se hagan las modificaciones necesarias a la nueva ley de armas y municiones (Decreto N.º 15-2009), con el fin de limitar aún más el porte de armas, en particular el de los funcionarios públicos. Las recomendaciones hechas por la CICIG deberán ser tenidas en cuenta para toda modificación a la ley en cuestión.

121. Debería reformarse la Ley de Orden Público, para reglamentar los estados de excepción, conforme a los estándares internacionales en la materia<sup>23</sup>. A este respecto, sería importante considerar una futura reforma constitucional a los artículos 138 y 139, de manera que sus disposiciones sean conformes a las normas internacionales de derechos humanos.

122. Es necesario que se adopte una reforma a la ley de Amparo, Exhibición Personal y Constitucional, que reglamente el uso del amparo con el fin de que éste cumpla con su función original que consiste en la protección de los derechos fundamentales, sin que sea utilizado como un mecanismo de tercera instancia y/o de dilación de los procesos judiciales, incluyendo sanciones para los abogados que incurran en uso abusivo del amparo, siempre y cuando las mismas sean impuestas al término de un procedimiento que cumpla con todas las reglas del derecho a un debido proceso.

123. El Relator Especial retoma la recomendación de la Oficina en Guatemala del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, en el sentido de que las instituciones del sistema de justicia elaboren de manera conjunta con los pueblos indígenas, una política de acceso a la justicia para los pueblos indígenas, que incorpore elementos geográficos, lingüísticos, y de pertinencia cultural, que a la vez tenga como objetivo una incorporación progresiva del derecho indígena en el sistema jurídico nacional<sup>24</sup>. En este punto, es importante resaltar que dicha incorporación deberá ser compatible con las normas internacionales de protección de los derechos humanos<sup>25</sup>. La integración del derecho indígena es un tema prioritario, ya que éste podría actuar de manera complementaria al sistema de justicia oficial, consolidándose como un mecanismo adicional de lucha contra la impunidad.

124. Se recomienda que se adopten las reformas legislativas necesarias para evitar las violaciones al derecho a ser juzgado en un plazo razonable, así como medidas alternativas a la detención preventiva, las cuales deberán respetar el principio de proporcionalidad y tener como fin la reintegración en la sociedad. Asimismo, se recomienda la urgente adopción de reformas fiscales con destino a superar las limitaciones presupuestarias que adolece el sistema de justicia.

### **Conclusions on the follow-up report** (A/HRC/11/2/Add.7, para 44 - 45)

44. Since August 2006, the security situation in Guatemala has deteriorated in nearly every category. Furthermore, many of the reforms under consideration at the time of the Rapporteur's original mission have still not been implemented.

<sup>23</sup> Ver A/HRC/8/4.

<sup>24</sup> A/HRC/10/31/Add.1.

<sup>25</sup> Tal como lo recomendó el Comité para la Eliminación de la Discriminación Racial (CERD/C/GTM/CO/11, párr. 14).

45. As was the case when the Special Rapporteur visited Guatemala, the policies that need to be pursued to improve the security situation and improve accountability for crimes are well known to Guatemalans. It is crucial that Guatemala renew the mandate of the CICIG, which is set to expire in September of this year, so that it can continue to dismantle violent criminal networks. Guatemala needs to develop a responsible fiscal policy, and allocate sufficient funds to the chronically underfunded criminal justice institutions. It also needs to ensure that funds are set aside so that Guatemala can continue CICIG's work, without full reliance on international donations. Priority should also be given to improving witness protection, and Guatemala should work with CICIG to establish the necessary safety mechanisms. Guatemala should also continue to implement the pending national security legislation, particularly the Law on Arms and Munitions and the Law on Private Security.

## Guyana

### Introduction

During the period under review, the Independent Expert on minority issues visited Guyana from 28 July and 1 August 2008 (please refer to document A/HRC/10/11/Add.2).

### Conclusions and recommendations (A/HRC/10/11/Add.2, para.80-97)

80. The current Government of Guyana must be commended on the steps it has taken to date to address issues of ethnic tensions, criminal activities and economic underdevelopment. Those efforts, while substantial, have been far from sufficient to generate trust and a sense of cooperation across ethnic groups.

81. All groups in Guyana, Afro-Guyanese, Indo-Guyanese, indigenous peoples and others, have contributed immensely to the economic development and cultural wealth of Guyana. While the histories of these communities have been different, most have suffered hardships, historical injustices and gross human rights violations that must be acknowledged. All have suffered from the destructive impact and legacy of colonial rule, while contributing their labour and their lives to building the modern Guyana. Additionally, it should be acknowledged that injustices have been done in the post-colonial era, sometimes under short-sighted or misguided leadership and often in the interests of achieving and maintaining power. Ethnicity has been grossly manipulated as a political tool.

82. As identified by the Special Rapporteur on contemporary forms of racism in 2003, the harsh reality is one of ethnic polarization among Guyanese of African, Indian and indigenous descent. This polarization, starkly reflected in the ethnic composition of the political parties, is reproduced in State institutions, particularly in the army and the police. Yet the people of Guyana desire a different future of security, prosperity and shared development. They acknowledge that all communities deserve and must have a stake in that future. For reconciliation to take place, a climate of trust must be established. The challenges that exist, both historic and current, must be confronted collectively.

83. Ethnically based divisions and politics have created two separate and conflicting narratives and perceptions of reality in Guyana. On the part of the Afro-Guyanese, there is a widely held belief that they are discriminated against by an Indian-dominated and supported Government that puts Indian interests to the fore, particularly in resource allocation, government contracts and employment. On the part of the Indian-Guyanese, there is a belief that an Afro-centric political opposition, if in power, would settle political scores and work solely in the interests of Afro-Guyanese. On the basis of recent atrocities and ongoing killings, both ethnic groups currently perceive a heightened threat of violence from the other. Many believe this threat to be sanctioned or supported to some extent by the opposite political party. Rumours and conspiracy theory are rife and are being exploited by those who might seek to fuel ethnic tensions for their own ends.

84. In July 2003, the Special Rapporteur on contemporary forms of racism highlighted that he found that every level of Guyanese society is permeated by a profound moral, emotional and political fatigue, arising out of the individual and collective impact of ethnic polarization. Five years later, the independent expert visited communities that are moving from malaise, in some instances, into despair, anger and resistance. This is particularly evident in Afro-Guyanese communities.

85. The stigmatization of young Afro-Guyanese males and entire African communities is a serious concern. Derogatory stereotypes of criminality colour wider societal perceptions of Afro-Guyanese individuals and communities. Operations such as “Restore Order” focused on Buxton and other Afro-Guyanese communities add to the perception that they constitute a “problem” to be solved by security and law enforcement means. Buxtonians believe there is a presumption of criminality used to justify subsequent excessive force in the conduct of joint services operations in their community and that illegal covert “security” forces have been sanctioned to operate in Guyana.

86. Guyana must take immediate steps towards healing the wounds of history and those inflicted by recent events. It must close the widening fault lines that exist between communities and take all necessary

steps to avoid a decline into lawlessness, impunity and ethnically based conflict. Short and long-term strategies, developed in consultation with all communities, must be put in place to address immediate concerns and the root causes of tensions that threaten to break out into violence. It is vital in the current climate of suspicion in Guyana to build trust between communities and faith in public institutions and in government.

87. For Guyana to progress, it cannot be acceptable for there to be an understanding, real or perceived, that the Government is an Indian administration working in the interest of Indians and that the opposition is African; that an Indian employer will recruit only an Indian worker; that public contracts will be granted on the basis of ethnicity; that the police and military are African institutions; that crime is a problem centred in the African community; or that certain villages are exclusively African or Indian.

88. A period of democratic dialogue under which the main political parties had agreed, on the basis of a joint communiqué on 6 May 2003, to work together to find solutions in the interests of all Guyanese people failed to achieve tangible results. Despite the initiation of numerous such political processes, little meaningful impact has been achieved. This has undermined confidence in political processes, particularly among Afro-Guyanese communities that feel politically disenfranchised. Reforms must be far reaching and highly consultative. However processes must be time-bound, action-oriented, and must lead to concrete, achievable outcomes.

89. The independent expert considers that previous conclusions and recommendations, including those of the Special Rapporteur on contemporary forms of racism and the concluding observations of the Committee on the Elimination of Racial Discrimination of April 2006, remain highly relevant and she fully endorses them. However, with few exceptions, they have not been implemented. The Government of Guyana, all political parties, non-governmental organizations, and other stakeholders are urged to fully implement those recommendations as a roadmap for equality, non-discrimination and respect for human rights which these collective recommendations provide.

90. The Government, all political parties, and religious, cultural and civil society groups representing different communities should take responsibility to reach out beyond the ethnic divide and to build bridges between communities. Moderate and conciliatory voices among all communities must come to the fore.

91. The Government should take steps to respond convincingly to perceptions that the Afro-Guyanese community as a whole has been targeted during actions by the joint services resulting in arbitrary detention without trial, torture, deaths and mistreatment in custody, and other extrajudicial killings. Numerous specific cases brought to the attention of the independent expert reveal issues with respect to thorough and transparent conduct of investigations, due process and the rule of law. Urgent independent review of Guyana's security and law enforcement services and justice system is required.

92. The Government and both political parties should take full responsibility to ensure that decisions taken to resolve conflicts are fully implemented. In February and March 2008, the National Stakeholder Forum was convened and brought together all the parliamentary parties and a broad cross-section of civil society organizations. To date, this process and the positive consultation and dialogue that it established, has not materialized into concrete, institutionalized forms of cooperation and conflict resolution. The independent expert recommends that the following decisions of the national stakeholder process be implemented as a matter of urgency:

- Establish as a matter of urgency a new Parliamentary Standing Committee on National Security with ministerial representation<sup>26</sup>
- Expedite the appointment of those constitutional commissions which are key features of the governance framework and still have not been established. Guarantee that those who are appointed as commissioners have credibility with all communities

<sup>26</sup> In a memorandum to the independent expert, the Government advises that the National Assembly approved the constitutional amendment required on 29 January 2009 with the Government and two of the three opposition parties (the AFC and GAP).

- Convene and activate the Parliamentary Constitutional Reform Committee to address issues presently before it and to examine further areas for constitutional reform
- Ensure the meaningful and effective participation of civil society in these parliamentary processes
- Explore an agreed mechanism for the continuation of the National Stakeholders' Forum

93. An open and constructive dialogue on inclusive governance, as envisaged in the 6 May 2003 communiqué and the follow-up agreement of 18 June, remains an essential component of a new political climate of cooperation. The Government should demonstrate leadership by meeting the preconditions set in those agreements and initiating such a dialogue with all stakeholders at the earliest opportunity. Included in the agenda should be models used in other countries with deeply divided ethnic communities to encourage the formation of multi-ethnic political parties.

94. The Government should demonstrate support for educational and cultural projects established by institutions and organizations within the Afro-Guyanese community and facilitate funding for those projects.

95. Restrictions on the media and freedom of expression should be lifted and legal definitions of the offences of “treason” should be evaluated as against international standards of freedom of expression. The Government should consider whether having the President also holding the portfolio of Minister of Communication has a chilling effect on freedom of expression in the current highly polarized context of Guyana.

96. A lack of disaggregated statistical data in all sectors hampers detailed and rigorous analysis of the relative situations of different ethnic groups in Guyana. Disaggregated data should be collected on a voluntary and confidential basis, and analysed to reveal the extent of inequality and to enable informed policy decisions. Such data should be used to fashion aggressive targeted affirmative action programmes to address the economic, educational and social inequalities that exist in the Afro-Guyanese communities comparative to those in the Indo-Guyanese communities.

97. There is a lack of information on the impact of the anti-discrimination provisions of the Constitution and legislation. The Government should establish a programme to monitor the extent to which these provisions have been used as the basis for criminal or other legal proceedings and what the outcomes have been. There should also be a data-driven evaluation of the Office of the Ombudsman and the Ethnic Relations Commission. That should lead to a re-evaluation of whether additional, more effective mechanisms should be created to tackle aggressively ethnic discrimination. This should be part of a national plan of action as called for in the Durban Programme of Action.

## Haiti

### Introduction

During the period under review Haiti was visited by two special procedures mandate holders. The Independent Expert on the situation of human rights in Haiti visited the country from 17 to 28 November 2008 (please refer to document A/HRC/11/5). The Special Rapporteur on contemporary forms of slavery, including its causes and consequences visited from 1 to 10 June 2009 (please refer to document A/HRC/12/21/Add.1).

Conclusions and recommendations of the Independent Expert on the situation of human rights in Haiti (A/HRC/11/5, para.87-94)

87. In the light of the foregoing observations, the independent expert makes the recommendations set out below.

88. On the judicial system, he recommends the following:

- (a) Appointment of the President of the Court of Cassation and the President of the Supreme Council of the Judiciary and initiation of the programme for the vetting of judges;
- (b) Appointment of the director-general of the Judicial Training College and implementation of initial training for judges;
- (c) Establishment of a judicial inspectorate composed of judges with a view to the regular, ongoing and effective supervision of the activities of the courts and the appointment of judges in order to ensure the proper functioning of the judicial system and thus safeguard the rights of persons before the law;
- (d) Establishment of the two specialized chambers to deal with certain serious political offences and with economic and financial crimes;
- (e) Clarification and simplification of certain criminal procedures, particularly with regard to non-custodial and suspended sentences, police custody and habeas corpus, as well as the duration of pre-trial detention and the delegation of judicial powers to the criminal police;
- (f) Due attention to the issue of youth imprisonment and to the provisions of the Convention on the Rights of the Child;
- (g) Adoption, in the Juvenile Code, of provisions promoting youth crime prevention strategies, alternative non-custodial measures and the implementation of effective rehabilitation and reintegration programmes, while encouraging foster care in the case of some non-serious crimes;
- (h) Institution of a legal framework to govern the functioning of the Institute of Forensic Medicine, creation of a demarcation line between the State University of Haiti's hospital mortuary and the Institute's mortuary, and consideration of the possible extension of the services to the provincial jurisdictions through the setting up of at least two Institute annexes in the towns of Le Cap and Les Cayes;
- (i) Continuation of the expansion of the network of law centres and the implementation of a mechanism for regular training and exchanges between persons in charge of the law centres.

89. On the police system, he recommends the following:

- (a) Greater attention to certification of the members of the General Inspectorate of the National Police and increase in human and financial resources;
- (b) Allocation of priority to vetting senior police officers in order to send out a clear signal as to the objective being pursued;
- (c) Regular and close involvement of the MINUSTAH Human Rights Section in all monitoring stages of the procedure to ensure that the process conforms to relevant international standards;
- (d) Increase in the recruitment of women into the police;
- (e) Increase in the number of French-speaking or Creole-speaking United Nations Police officers;
- (f) Routine learning of Creole by United Nations Police officers.

90. On the penitentiary system, he recommends the following:



- (a) Initiation of a national programme for the building of new prisons to relieve the strain on the penitentiary system and to address the issues of prison overcrowding and the use of police stations as places of detention;
- (b) Continuation of the recruitment, vetting and supervision of prison administration personnel;
- (c) Implementation, with ICRC assistance, of a programme of health control and monitoring at penitentiary establishments;
- (d) Adoption of measures to ensure that prisons are supplied with sufficient stocks of medicines, drugs and provisions to guarantee detainees' right of access to medical care and food;
- (e) Conferment of a new, nationwide mandate on the Consultative Commission on Prolonged Pre-trial Detention that will enable it to examine, in accordance with clear and verifiable criteria, cases involving non-serious crimes or arbitrary detention, and adoption of measures to ensure that a prisoner's discharge may only be authorized by a working group composed of judges, in order to prevent the release of dangerous criminals.

91. On the Office of the Ombudsman, he recommends the following:
- (a) Adoption of the legislative bill revising the functions of the Office of the Ombudsman and the allocation to it of a budget to allow, in particular, the setting up of regional bureaux that will put the institution in closer contact with its beneficiaries;
  - (b) Creation of the post of Deputy Ombudsman;
  - (c) Setting up of a programme to support the development of the mandate of the Office of the Ombudsman and the organization of its work at the national and regional levels, with the involvement of national stakeholders in Haiti, the OHCHR National Institutions Unit and the network of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.
92. On combating violence against women, he advocates the following:
- (a) Continuation and extension of the large-scale campaign to eradicate sexist stereotypes in schools, the media and advertising;
  - (b) Adoption of the law on all forms of violence against women including domestic violence, the law on filiations and responsible parenthood and the law on working conditions of paid domestic staff.
93. On the deportee issue, he recommends the following:
- (a) Adoption of measures to ensure that consulates fully play their part in the administration of the deportation process;
  - (b) Support for the pilot project on the resettlement, rehabilitation and reintegration of Haitian deportees, which is being executed by the International Organization for Migration;
  - (c) Suspension of mass expulsions of migrants unlawfully residing in the territory of other countries.
94. On economic and social rights, he recommends the following:
- (a) Ratification of the International Covenant on Economic, Social and Cultural Rights;
  - (b) Intensification of efforts to meet the international commitments entered into in the area of economic and social rights.

**Conclusions and recommendations** of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (A/HRC/12/21/Add.1, para.60-70)

60. The Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences, acknowledges the efforts of the Government in addressing the issue of *restavèk* children, a practice that constitutes a modern form of slavery, but believes that many challenges remain. Taking into consideration all the difficulties faced by the Government of Haiti, the Special Rapporteur congratulates the Government on all its achievements and its commitment to addressing human rights challenges, in particular those related to children, as they constitute almost half of the population. She strongly believes that the security and protection of rights of each individual in the State enhances the security within the entire nation, making it stronger and equal. In that spirit, she reiterates her desire to continue her dialogue with the Government and, specifically, to cooperate in the protection of vulnerable persons from contemporary

forms of slavery in Haiti. In this spirit, she draws the following conclusions and makes the following recommendations.

61. The Special Rapporteur believes that the following issues should be addressed as a matter of urgency and priority:

- (a) The limited application in national law and practice of the international human rights obligation of Haiti, irrespective of the fact that Haiti has ratified many international human rights instruments on the elimination of slavery and the protection of the rights of the child, in particular the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery, ILO Convention No. 29 (1930) on Forced or Compulsory Labour, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the United Nations Convention against Transnational Organized Crime;
- (b) The fragmented nature and limited institutional and financial capacities of State agencies dealing with vulnerable children;
- (c) The limited number of programmes addressing the issue of child labour;
- (d) The limited access to free schooling for children from poor rural communities, as well as the absence of a comprehensive health-care and social protection system;
- (e) The absence of comprehensive legislation protecting the rights of the child, in particular vulnerable groups of children, including *restavèk*;
- (f) The weakness of the judicial system in ensuring prosecution, fair trial and adequate punishment of perpetrators, thus preventing access to justice and the right to an effective remedy;
- (g) Insufficient attention to the issue, limited cooperation and fragmented programmes at the level of international agencies;
- (h) Sporadic and insufficient efforts by the Government to cooperate with and support civil society.

62. In addition, the Special Rapporteur believes that the human security of each individual child is of utmost importance to the sustainable development of a society based on human rights and a precondition for sustainable peace. The Government, in cooperation with the international community, should attribute the highest priority to policies and programmes centred on the protection of human rights, in particular the rights of children.

63. She would urge the Government to establish a national commission on children, with special attention paid to vulnerable children, to monitor and ensure protection of their rights. She encourages the Government to conduct an extensive institutional assessment of the agencies dealing with children, especially vulnerable children, to determine where there are gaps and needs, and the necessary professional knowledge, financial requirements and technical equipment necessary for effective functioning.

64. She would also urge the Government to ensure the disarmament of individuals in Haiti to reduce violence and restore human security and social cohesion.

65. The Special Rapporteur recommends that in the area of prevention, the Government develop proactive complex prevention programmes to eliminate the practice of *restavèk* by:

- (a) Launching a countrywide sensitization campaign, including in border and rural areas, on the dangers for and impact on children and child labour in general of the practice of *restavèk*;
- (b) Facilitating access to and monitoring the registration of children, particularly at birth, throughout the country;
- (c) Providing alternative income-generating programmes for poor families in rural communities to develop agriculture and market their goods through provision of small start-up grants, establishment of revolving funds for small loans, and training programmes, especially for female-headed households;
- (d) Ensuring compulsory and free primary education for children, and increasing access to educational facilities in rural areas, as well as to free health care;

- (e) Training government officials dealing with vulnerable children, including in Government ministries, local Government agencies, the *Brigade de protection des mineurs*, labour inspectors, teachers, doctors and all other relevant professional groups and stakeholders;
- (f) Developing specialist national referral systems and coordinated protection mechanisms for vulnerable children and ensuring their effective functioning;
- (g) Ensuring decentralization of Government policies and programmes to relieve existing economic and social patterns.

66. The Special Rapporteur believes that the Government of Haiti should take urgent measures to bring local legislation in conformity with international legal instruments ratified by Haiti. In addition, the Government should ratify the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime. Furthermore, the Special Rapporteur considers it necessary to develop and implement national legislation in order to address in a comprehensive way all issues related to specific groups of vulnerable children and mechanisms of implementation. In addition, the Special Rapporteur recommends the adoption of a law on the fight against trafficking in humans and the development of strong mechanisms on child adoption. She also urges the adoption of immediate and long-term measures to address shortcomings in the administration of justice in the country.

67. In order to ensure the safe return and effective reintegration of children into their families and communities, she recommends the Government to:

- (a) Develop strong cooperation between State entities (the police brigades dealing with minors, Government departments dealing with children), social workers and NGOs to effectively address these challenges and protect the rights of the child;
- (b) Establish special hotlines and services, such as temporary places of safety for *restavèk* children;
- (c) Ensure safe return and monitor reintegration and reinsertion into family, schools and community, and provide necessary assistance packages ensuring sustainable protection;
- (d) Encourage access to justice and develop special legal protection mechanisms and measures (in conformity with international human rights standards) for the participation of children in judicial proceedings;
- (e) Develop special training and sensitization for the judiciary on the rights of the child.

68. The Special Rapporteur believes that international organizations should:

- (a) Prioritize the protection of vulnerable children and their families in rural and urban areas in their programmes and assist the Government and NGOs in the implementation of their programmes;
- (b) Mainstream protection of vulnerable children and their families in all development and human security programmes;
- (c) In cooperation with the Government and NGOs, conduct a study on the nature and incidence of child labour and, based on its findings, develop programmes to address the issue;
- (d) Establish special task forces to develop and monitor the effectiveness of special programmes to address the issue.

69. The Special Rapporteur notes the zero-tolerance policy of MINUSTAH with regard to sexual exploitation and abuse, as well as related measures described in the Secretary-General's report to the Security Council of March 2009 (S/2009/129, para.71 and 72), as well as training activities to reduce the risk of future incidents of sexual exploitation and abuse. The Special Rapporteur also notes the Secretariat's special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13), as well as its overall policy developed with regard to human trafficking and United Nations peacekeeping, which highlights the fact that "The trafficking of human beings is a serious crime and a severe form of exploitation and abuse which perpetuates insecurity, vulnerability and grave human rights abuses suffered by post-conflict societies ... In the peacekeeping context, human trafficking is simultaneously a gross

violation of individual human rights and an assault on the rule of law.”<sup>27</sup> The policy document outlines programmes in three areas: awareness and training; discipline, accountability and community relations; and support to anti-trafficking activities. It specifies as the two key goals to “establish a system to prevent, monitor, minimize, investigate and punish the involvement of UN peacekeeping personnel in activities that support human trafficking and other sexual exploitation and abuse in support of the Secretary-General’s ‘zero tolerance’ stance”; and “... to have available the tools to establish or to support national efforts ... to prevent and counter human trafficking in post conflict environments, particularly in support of the rule of law”.<sup>28</sup>

70. The Special Rapporteur encourages MINUSTAH to take all necessary steps to ensure full implementation of relevant policies, awareness-raising and training programmes to prevent incidents, and full transparency and accountability for violations, including ensuring effective remedies for victims. A zero-tolerance policy prohibiting the use of child labour by national and international staff should be developed and implemented. Moreover, the Special Rapporteur emphasizes that particular attention should be paid to the practice of *restavèk*, and in this regard, recommends that specific training modules on the issues of trafficking in human beings, combating child labour and children’s rights be developed. These modules should be designed and implemented with the advice of anti-trafficking and children’s rights experts from intergovernmental and non-governmental organizations. A special mechanism should be established to evaluate and analyse progress on combating trafficking and child labour.

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<sup>27</sup> “Human Trafficking and United Nations Peacekeeping”, DPKO Policy Paper, March 2004, para.3 and 4.

<sup>28</sup> Ibid, para.17 (i) and (ii).

## Honduras

### Introduction

During the period under review, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression visited Honduras from 26 to 30 November 2007 (please refer to document A/HRC/11/4/Add.2). The full report is available in Spanish only.

### Conclusions (A/HRC/11/4/Add.2, para.72-79)

72. El Relator Especial agradece encarecidamente a las autoridades hondureñas el hecho de que le hayan brindado la oportunidad de poder realizar una visita al país. En este sentido, el Relator Especial se complace en comprobar cómo la libertad de opinión y expresión en el país se incluye en la agenda nacional como una prioridad. El Relator Especial anima a las autoridades hondureñas a que continúen extendiendo este tipo de visitas a otros relatores especiales y grupos de trabajo del Consejo de Derechos Humanos.

73. El Relator Especial constató cómo la libertad de opinión, expresión e información se ha visto vulnerada por varios motivos en la República de Honduras. El aumento de casos de amenazas y ataques a periodistas y otros profesionales de los medios y la impunidad en la que viven los responsables de estos actos han hecho que la sociedad hondureña se encuentre en una situación de inseguridad y desconfianza.

74. El Relator Especial considera que las autoridades hondureñas deberían hacer de la lucha contra la impunidad su principal prioridad. El sistema judicial debería funcionar con eficacia e imparcialidad, respetando la legislación nacional de conformidad con los principios recogidos en el derecho internacional en lo que respecta a la defensa y promoción del ejercicio de la libertad de opinión y expresión. En este sentido, las autoridades gubernamentales deberían, teniendo en cuenta las demandas y peticiones de todos los sectores de la sociedad, abogar por una prensa transparente y objetiva, una prensa que no quede limitada por intereses contrarios a los de la comunidad en su conjunto. Es sumamente importante que se creen programas de protección eficaces para los periodistas y otros profesionales de los medios de comunicación.

75. El Relator Especial es consciente de que el país ha hecho importantes progresos en lo que se refiere a la regulación de determinadas cuestiones relacionadas con la libertad de opinión y expresión. En este sentido, el Relator Especial celebra la aprobación de la Ley de Transparencia y Acceso a la Información Pública. Sin embargo, considera que el Estado hondureño puede asumir una postura más proactiva en lo que respecta a la difusión y publicidad de la información de interés público. También el Relator Especial celebra que se haya derogado del Código Penal hondureño la figura del desacato. Sin embargo, expresa su preocupación por que sigan juzgándose por la vía penal los delitos contra el honor cometidos por los medios de comunicación. El Relator Especial considera que esos casos deberían resolverse por la vía civil.

76. El Relator Especial desea señalar que el poder judicial nunca debería ser utilizado como un mecanismo de acoso a los periodistas y que ningún profesional de los medios puede ser sancionado por difundir la verdad o por formular críticas o denuncias contra los poderes públicos. El Relator Especial opina que es importante que se impulse la reforma a la ley penal a fin de adecuarla a los estándares del sistema de protección de los derechos humanos expuestos. En este sentido, la libertad de opinión y de expresión bien ejercida no debe tener ni límites ni condiciones.

77. El Relator Especial desea destacar otro aspecto importante que ha podido observar durante la realización de su visita: la actual concentración de los medios de información en manos de unos pocos propietarios, y sus consecuencias. Esta situación conlleva que los periodistas y otros profesionales de los medios vivan en una situación de inseguridad.

78. El Relator Especial ha conocido durante su visita al país que aún se siguen reportando casos de periodistas que se enfrentan a procesos judiciales acusados de cometer delitos contra el honor. Esto se

encuentra regulado en el Código Penal, lo que sin lugar a dudas contraviene la tendencia y estándares internacionales en la materia.

79. El Relator Especial pudo observar durante su visita que la República de Honduras carece de un procedimiento transparente y equitativo para las solicitudes de asignación de frecuencias en el espectro radioeléctrico por parte de solicitantes con fines no comerciales tales como radios rurales y/o comunitarias. Asimismo, ha observado una prevalencia de criterios exclusivamente económicos en los procedimientos de asignación de licencias mediante subasta. En este sentido, el Relator Especial recomienda que se lleve a cabo una reforma integral ante el Congreso para derogar las normas contrarias a los estándares internacionales en materia de libertad de expresión y armonizar la legislación en dichos términos. Las disposiciones de la Constitución son propicias para la armonización en cuanto a la supremacía de los tratados sobre la Ley y la aplicación de los principios y prácticas de derecho internacional establecida en el artículo 15 constitucional.

### **Recommendations** (A/HRC/11/4/Add.2, para.80-86)

80. El Relator Especial desea hacer hincapié en el papel que ocupa la protección del derecho a la libertad de opinión y expresión en el marco de la promoción y protección de los derechos humanos. En este sentido, desea recordar que las limitaciones de estos derechos básicos pueden acarrear un deterioro en la protección, respeto y disfrute de otros derechos y libertades fundamentales.

81. El Relator Especial recomienda a las autoridades hondureñas que refuercen y creen programas de protección para los profesionales de los medios, con miras a que puedan ejercer sus funciones de una manera digna y sin coacciones.

82. El Relator Especial recuerda al Gobierno de Honduras que la lucha contra la impunidad debería ser un tema prioritario en su agenda. En este sentido, exhorta a las autoridades a que desplieguen todos los esfuerzos necesarios para que los responsables de violaciones de los derechos humanos sean llevados ante la justicia. Los casos de ataques y amenazas contra los periodistas deberían resolverse dentro del sistema judicial con la mayor eficacia e imparcialidad, respetando la ley nacional de conformidad con las obligaciones derivadas del derecho internacional.

83. El Relator Especial insta al Gobierno a que promueva una cultura de transparencia y rendición de cuentas en la sociedad política. En este sentido, el Relator Especial insta al Gobierno a que prepare proyectos de ley y leyes concretas que contribuyan a reforzar la fragilidad institucional. Asimismo, el Relator Especial recomienda al Gobierno hondureño que adopte una postura adelantada en lo que se refiere a la difusión y publicidad de la información de interés público.

84. El Relator Especial desea recordar al Gobierno hondureño que ningún profesional de los medios debería ser sancionado por difundir la verdad o formular críticas contra los poderes públicos y que el poder judicial bajo ningún concepto debería ser utilizado como un órgano que restrinja la labor periodística. En este sentido, el Relator recomienda a las autoridades que refuercen y agilicen los mecanismos necesarios para que únicamente puedan aplicarse sanciones civiles en el caso de ofensas a funcionarios públicos.

85. El Relator Especial recomienda al Gobierno hondureño que se adopten las medidas necesarias para que se armonice la Ley Marco del Sector de Telecomunicaciones con los estándares internacionales y los instrumentos de Derecho internacional de los derechos humanos.

86. El Relator Especial recomienda a las autoridades que consideren la posibilidad de realizar estudios sobre las características, técnicas, desventajas de cada uno de los medios, con el fin de poder desarrollar campañas efectivas de comunicación. Dichos estudios deberían realizarse teniendo en cuenta las demandas de todos los sectores de la sociedad. Asimismo, deberían realizarse estudios sobre las características, el estilo y los intereses que defiende cada emisora de radio y televisión para determinar qué tipo de información podrían difundir u ocultar.

## India

### Introduction

During the period under review, the Special Rapporteur on the freedom of religion or belief visited India from 3 to 20 March 2008 (please refer to document A/HRC/10/8/Add.3).

### Conclusions and recommendations (A/HRC/10/8/Add.3, para.59-74)

59. Historically, India has been home to believers of a whole range of religions and beliefs and India's society is still characterized by a remarkable religious diversity. The Supreme Court has recently emphasized that "India is a country of people with the largest number of religions and languages living together and forming a Nation". The Special Rapporteur would like to acknowledge that such diversity poses particular challenges for the executive, legislative and judicial branches. There are democratic safeguards within the political system and the institutions have accumulated a vast experience in protecting human rights. Many of the Special Rapporteur's interlocutors have pointed to the positive impact of Indian secularism as embodied in the Constitution as well as to the high degree of human rights activism in India.

60. The central Government has developed a comprehensive policy pertaining to minorities, including religious ones. In this context, the Special Rapporteur would like to laud the Prime Minister's New 15 Point Programme for Welfare of Minorities as well as various reports on religious minorities, for example the reports issued by the committees headed by Justice Rajinder Sachar in 2006 and by Justice Renganath Misra in 2007. Such committees mandated by the Government are good examples of mechanisms put in place to analyse the situation and put forward recommendations for Government action. Concrete follow-up to such recommendations both at the national and at the state levels seems vital in order to address the problems identified in these reports.

61. The National Commission for Minorities, too, has taken up several challenges. Their members took prompt action and issued independent reports on incidents of communal violence with concrete recommendations. However, the performance of various state human rights commissions depends very much on the selection of their members and the importance various governments attach to their mandates. It is vital that members of such commissions have acute sensitivity to human rights issues and they must reflect the diversity of the state, particularly in terms of gender, since women are often subject to religious intolerance. The inclusion of women in such commissions would be welcomed by the Special Rapporteur as she noticed that women's groups across religious lines were the most active and effective human rights advocates in situations of communal tension in India.

62. All of the Special Rapporteur's interlocutors recognised that a comprehensive legal framework to protect freedom of religion or belief exists, yet many of them - especially from religious minorities - remained dissatisfied with its implementation. Since the political system of India is of a federal nature and states have wide powers, including in the field of law and order, the level of action of the Government to protect its citizens in terms of freedom of religion or belief varies from state to state. The Special Rapporteur would like to recognize the efforts and achievements of the central Government. However, several issues of concern with regard to intolerance and discrimination based on religion or belief remain pertinent, especially in the context of certain states.

63. Organised groups claiming roots in religious ideologies have unleashed an all-pervasive fear of mob violence in many parts of the country. Law enforcement machinery is often reluctant to take any action against individuals or groups that perpetrate violence in the name of religion or belief. This institutionalised impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.

64. In this report the Special Rapporteur would also like to follow-up on her predecessor's country visit to India in 1996 and on his pertinent recommendations. As the communal violence in Gujarat in 2002 evidences, Mr. Amor was unfortunately prophetic in his country report, in which he expressed his fears

that “something in the nature of the Ayodhya incident will recur in the event of political exploitation of a situation” (E/CN.4/1997/91/Add.1, para.46). She is also very much concerned about the degree of polarization in some pockets of different faith groups and about the danger of chain reactions that can be triggered by communal tensions. The Special Rapporteur would like to emphasize that there is at present a real risk that similar communal violence might happen again unless political exploitation of communal distinctions is effectively prevented and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is adequately addressed.

65. It is a crucial - albeit difficult - task for the State and civil society to challenge the forces of intolerance. The Special Rapporteur would like to refer to encouraging examples where private individuals have come to each other's rescue during communal violence, crossing all religious boundaries. Indeed, a large number of victims in Gujarat recognised the positive role played by some national media channels and other courageous individuals who effectively saved lives during the communal violence in 2002.

66. The visual arts industry in India has played an important role in public education regarding religious tolerance and can contribute to the prevention of communal tensions. However, due to its visibility and potential impact on the population, the visual arts industry remains a target of mob pressure and intimidation by non-State actors. While any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence needs to be prosecuted, this subtle form of self-censorship begs the question how the State could prevent the build-up of an atmosphere of fear of repercussions and mob pressure.

67. The Special Rapporteur appeals to the Indian authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Legal aid programmes should be made available to survivor groups and minority communities in order to effectively prosecute and document cases of communal violence. Furthermore, a central telephone hotline might be set up to accept complaints and to register allegations concerning police atrocities. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalised police forces at the state level.

68. While inquiries into large-scale communal violence should not be done in indecent haste, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the State could envisage setting up of truth and reconciliation commissions to create a historical account, contribute to healing and encourage reconciliation in long-standing conflicts, such as the one in Jammu and Kashmir.

69. Concerning vote-bank politics and electoral focus on inter-communal conflicts, the Special Rapporteur would like to reiterate her predecessor's suggestion to debar political parties from the post-election use of religion for political ends. In addition, the Representation of the Peoples Act 1951 should be scrupulously implemented, including the provision on disqualification for membership of parliament and state legislatures of persons who promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.

70. The laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular due to the use of discriminatory provisions and vague or overbroad terminology. A public debate on the necessity of such laws, more information on their implementation and safeguards to avoid abuse of these laws seem vital to prevent further vilification of certain religious communities. The Special Rapporteur is concerned that such legislation might be perceived as giving some moral standing to those who wish to stir up mob violence. She would like to emphasize that the right to adopt a religion of one's choice, to change or to maintain a religion is a core element of the right to freedom of religion or belief and may not be limited in any way by the State. She also reiterates that peaceful missionary activities and other forms of propagation of religion are part of the right to manifest one's religion or belief, which may be limited only under restrictive conditions.

71. The Special Rapporteur would like to recall the recommendation by the Committee on the Elimination of Racial Discrimination (A/62/18, para.179) to restore the eligibility for affirmative action



benefits of all members of Scheduled Castes and Scheduled Tribes having converted to another religion. The Special Rapporteur recommends that the Scheduled Caste status be delinked from the individual's religious affiliation.

72. With regard to religion-based personal laws, the Special Rapporteur would like to recommend that such laws be reviewed to prevent discrimination based on religion or belief as well as to ensure gender equality. Legislation should specifically protect the rights of religious minorities and of women, including of those within the minority communities.

73. In order to protect and empower members of religious minorities, the State should be proactive and take appropriate measures against all forms of intolerance and discrimination based on religion or belief which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including Internet. Also in line with the Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination (E/CN.4/2002/73, appendix), the Government should favourably consider providing teachers and students with voluntary opportunities for meetings and exchanges with their counterparts of different religions or beliefs as well as facilitating educational study abroad. Furthermore, specific education components on mass media could be envisaged in order to help the students to select and analyse the information conveyed by the mass media concerning religions and beliefs.

74. Finally, the State, non-governmental organizations and all members of civil society are encouraged to join their efforts with a view to taking advantage of the media and cultural institutions to provide the individual with relevant knowledge in the field of freedom of religion or belief. In this regard, setting up educational institutions for the whole South Asian region or encouraging joint movie productions might contribute to strengthening peace, understanding and tolerance among individuals, groups and nations.

## Israel

### Introduction

During the period under review, the Special Rapporteur on the freedom of religion or belief visited Israel from 20 to 27 January 2008 (please refer to document A/HRC/10/8/Add.2).

### Conclusions and recommendations (A/HRC/10/8/Add.2, para.68-75)

68. The State of Israel and the Occupied Palestinian Territory are home to a rich diversity of religions or beliefs and host religious sites revered by believers from all over the world. Yet, this very diversity, which should have been a blessing, tragically has polarized people on the lines of religion. The conflict has an adverse impact on the right of individuals and communities to worship freely and to attend religious services at their respective holy places. Liberty of movement, including access to places of worship, is restricted in particular for Palestinian Muslims and Christians through the existing system of permits, visas, checkpoints and the Barrier. While the Government of Israel informed the Special Rapporteur that these restrictions are necessary for security reasons, she would like to emphasize that any measure taken to combat terrorism must comply with the State's obligations under international law. Taking into account the individuals' freedom of religion or belief and liberty of movement as well as the principles of non-discrimination and international humanitarian law, the intrusive restrictions seem to be disproportionate to their aim as well as discriminatory and arbitrary in their application.

69. The Special Rapporteur's interlocutors from religious minorities living in Israel have by and large acknowledged that there is no religious persecution by the State. Within the Israeli democracy, she would like to emphasize the important role that the Supreme Court has played in the past and can continue to play for safeguarding freedom of religion or belief. However, groups within the Christian, Jewish and Muslim faiths have experienced different forms of discrimination in the State of Israel, for example with regard to the preservation of religious sites or allocation of public funding.

70. With regard to the situation in the Occupied Palestinian Territory, the Special Rapporteur is concerned about reports of the rising level of religious intolerance and the vulnerability of religious minorities, including some small Christian communities, against the background of a deficient rule of law.

71. Personal status questions in both Israel and the Occupied Palestinian Territory show the delicate relationship between State and religion. Even though the various religious courts for historical reasons have the jurisdiction for issues such as marriage and divorce, this does not absolve the authorities from their responsibility to ensure equal treatment and the implementation of human rights for all individuals.

72. The Special Rapporteur was deeply impressed by the guided tour through the Yad Vashem Holocaust Memorial Museum. She would like to emphasize the importance of documenting the history, preserving the memory of the victims and educating future generations. In her press statement of 27 January 2008, the Special Rapporteur referred to the International Day of Commemoration in memory of the victims of the Holocaust and joined the United Nations Secretary-General in remembering those whose rights were brutally desecrated at Auschwitz and elsewhere as well as in genocides and atrocities since.

73. The Special Rapporteur is encouraged by the engagement of many Israeli and Palestinian civil society organisations which have demonstrated that - despite conflict and religious polarization - people belonging to different religions and beliefs are able to extend respect and tolerance to each other. There also have been promising approaches of inter-faith and intra-faith dialogue on various levels. At the same time, the Special Rapporteur is concerned that many individuals she met during her visit in Israel and the Occupied Palestinian Territory bear deep resentments against other religions and their adherents.

74. A major challenge, which needs to be addressed immediately in order to avoid a further deterioration of the situation, is to effectively sanction any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. However, impunity for such acts of incitement is a concern both in the State of Israel and in the Occupied Palestinian Territory. Furthermore, the persistence

of violence committed in the name of religion is disturbing, for example with regard to violent acts perpetrated by zealous settlers or even worse in the form of suicide bombings by militant Islamists.

75. It is particularly worrying when children are being incited to express hatred toward those with a different religious affiliation. Education for tolerance, respect and recognition of diversity seems vital to get out of a vicious circle of discrimination, hostility and violence. In addition, long-term confidence building measures are required on all sides and at various levels. The Special Rapporteur would like to refer to the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination, in which both the Government of Israel and the Palestinian Authority actively participated. The Madrid Final Document (E/CN.4/2002/73, appendix), which was adopted by consensus on 25 November 2001, emphasizes that the young generation should be brought up in a spirit of peace, tolerance, mutual understanding and respect for human rights - especially for the respect of freedom of religion or belief - and that it should be protected against all forms of discrimination and intolerance based on religion or belief. Appropriate measures should be taken against such forms of intolerance and discrimination which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including the Internet. Furthermore, teachers and students should be provided with voluntary opportunities for meetings with their counterparts of different religions or beliefs.

### **Recommendations** (A/HRC/10/8/Add.2, para.76-85)

76. The Special Rapporteur recommends that all parties - especially in the framework of a possible peace agreement - bind themselves legally to protect the rights of religious minorities. Particular attention should be paid to include comprehensive guarantees for equality and non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites. Existing rights in respect of these religious sites should not be denied or impaired and freedom of worship should be safeguarded in conformity with existing rights. Any commitments, especially those which may affect human rights and fundamental freedoms, must be implemented and monitored in an effective and independent manner.

77. With regard to the protection and preservation of religious sites, the Special Rapporteur recommends that the Government of Israel issue as soon as possible non-selective regulations and designate holy sites on a non-discriminatory basis. The unique spiritual and religious dimension of the holy sites and their importance for believers in the whole world need to be appropriately taken into account. Furthermore, Israeli authorities should avoid delays in issuing visas for clergy or seminarians and should not impose limitations which might unduly hinder their ability to carry out religious activities in an effective manner.

78. The relevant authorities in Israel and the Occupied Palestinian Territory should consider discontinuing the indication of the religious affiliation on those official identity cards where this is still the case. In the meantime, the authorities should provide the possibility to indicate "other religion" or "no religion" on identity cards as well as the possibility not to divulge the religious beliefs of the cardholder at all in the application process.

79. Staff members of the police and military forces should be provided with adequate training in order to raise their awareness of multiple forms of discrimination based on grounds such as religion, race or ethnic origin and to enhance sensitivity about their duty to promote and respect international human rights standards, including freedom of religion or belief.

80. The Special Rapporteur recommends that the freedom of religion or belief receive more emphasis in the training of personnel of detention facilities and that the Standard Minimum Rules for the Treatment of Prisoners, especially rules 41 and 42, be applied to every prisoner, regardless of his or her religion or belief.

81. Concerning the allocation of public funding for religious bodies, the Special Rapporteur recommends that regulations and criteria for funding be published and applied to all religious groups on an equal and equitable basis.

82. Since the application of religious law to determine matters of personal status and the absence of provision for civil marriage effectively denies a large number of persons the right to marry in Israel, the Government of Israel should consider introducing legal provisions which allow for civil marriages in Israel. Similar concerns with regard to matters of personal status apply to the Occupied Palestinian Territory.

83. Concerning the Government of Israel's reservations on the appointment of female judges of religious courts and concerning religious laws on personal status matters, the Special Rapporteur would like to reiterate the recommendation by the Committee on the Elimination of Discrimination Against Women, which urged the State of Israel to consider withdrawing its reservations to articles 7 (b) and 16 because these were contrary to the object and purpose of the Convention on the Elimination of Discrimination Against Women.

84. Both in the State of Israel and in the Occupied Palestinian Territory, any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence should be effectively investigated, prosecuted and punished. Similarly, any related violent acts should be investigated in a prompt, transparent and independent manner, the perpetrators should be prosecuted and sentenced, and avenues for redress and protection should be offered to the victims.

85. In terms of prevention activities, the Special Rapporteur encourages the Government of Israel and the Palestinian Authority to promote the principles, objectives and recommendations of the Madrid Final Document. One possible example could be support for, and funding of, voluntary school exchange programmes between pupils and teachers from Israel and the Occupied Palestinian Territory. In addition, concrete initiatives of inter-religious and intra-religious dialogue, especially at the grass-roots level, should be fostered and encouraged in order to bridge the divides along religious lines.

## Italy

### **Introduction**

During the period under review, the Working Group on arbitrary detention visited Italy from 3 to 14 November 2008 (please refer to document A/HRC/10/21/Add.5).

### **Conclusions** (A/HRC/10/21/Add.5, para.106-109)

106. The Working Group finds that safeguards against illegal detention in the criminal justice system are numerous and robust. Situations of arbitrary detention can, however, result from the unreasonable length of criminal proceedings and from excessive recourse to remand detention. Immigrants are seriously over-represented among the prison population.

107. The Government has declared organized crime of the mafia type, the threat of international terrorism, and criminality by irregular migrants to constitute public security emergencies and has responded to each of them by adopting extraordinary measures. Some of the extraordinary measures adopted to face these challenges carry with them a considerable risk of resulting in arbitrary detention.

108. The system for administrative detention of migrants and asylum-seekers does not result in overall excessive deprivation of liberty. There are, however, weaknesses in the legal basis and procedural safeguards of the system and incongruities which need to be rectified to avoid arbitrariness.

109. Finally, regarding the deprivation of liberty of persons with mental health problems, the reform of the health care laws which abolished closed institutions has not been reflected in similar reforms regarding judicial psychiatric hospitals. The system of open-ended “security measures” for persons considered “dangerous” on the basis of mental illness, drug-addiction or otherwise might not contain sufficient safeguards.

### **Recommendations** (A/HRC/10/21/Add.5, para.110-124)

110. On the basis of its findings, the Working Group makes the following recommendations to the Government.

111. The Government should, as a matter of priority, put in place legislative and other measures to decrease the duration of criminal trials with a view to ensuring better protection of the right to be tried without undue delay.

112. Similarly, measures should be taken to reduce the share of prisoners awaiting final judgement, whether by expediting trials, stricter application of the principle that remand detention is a last resort, or both.

113. Incidents of police brutality against arrestees should be thoroughly investigated and those responsible held accountable.

114. Any reform to the special detention regime under article 41 bis of the Law on the Penitentiary System should aim at strengthening and expediting judicial review of the orders imposing or extending this form of detention, not to make it less incisive. The Government should also consider ways to ensure that reformation and social rehabilitation of the offender, which are essential aims of imprisonment according to both article 10 ICCPR and article 27 of the Italian Constitution, are not sacrificed to public security concerns.

115. The Government should refrain from any further deportation of persons suspected of terrorist activities to countries where they are at risk of arbitrary detention and torture. Judicial remedies against expulsion should have suspensive effect in all cases.

116. The Government should adopt measures to increase the access to alternatives to imprisonment for immigrants in conflict with the law, both in the adult and in the juvenile justice systems.

117. Legislation making non-compliance with immigration laws punishable by imprisonment (or as an aggravating circumstance) should be reconsidered.

118. Italy should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

119. The Government should implement the proposals made in the De Mistura report with regard to centres holding asylum-seekers and migrants.

120. With regard to first reception centres for asylum-seekers (CDAs), the deprivation of liberty in them, at present de facto, needs to be provided with a legal basis. If the detention of asylum-seekers in CDAs until the issuance of the document certifying their status as asylum-seekers is maintained, it must be limited by strict and tight timelines.

121. Detention in Identification and Expulsion Centres should be based on more careful examination of the individual case on the basis of criteria enshrined in law. Where a person files an asylum claim while detained in a CIE, continued detention in the CIE should not be automatic. Measures to promote the voluntary repatriation of expellees should be given more consideration. Where the expulsion of a migrant is ordered by a criminal court, preparations for the deportation should be carried out while the migrant is in prison, to avoid detention in a CIE. Legal aid to persons detained in CIEs should be strengthened.

122. The Government should continue providing the means which are necessary for the juvenile justice system to function in accordance with the principles enshrined in the juvenile justice legislation and Article 40 (3) and (4) of the Convention on the Rights of the Child.

123. The Government should consider reforms of the Judicial Psychiatric Hospitals in line with the 1978 reforms of the mental health care institutions. The principle of “persons who are found to be insane shall not be detained in prisons” (Rule 82 of the UN Standard Minimum Rules for the Treatment of Prisoners) should be given full effect.

124. The Government should give priority to the establishment of a national human rights institution in accordance with the Paris Principles, in particular with full and unfettered access to all places of detention.

## Kenya

### Introduction

During the period under review, the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Kenya from 16 to 25 February 2009 (please refer to document A/HRC/11/2/Add.6).

### Conclusions and recommendations (A/HRC/11/2/Add.6, para.85-115)

85. The President should publicly acknowledge his commitment to ending unlawful killings by the police. To this end:

- (a) The Police Commissioner should be replaced immediately;
- (b) Unambiguous public orders should be issued that under no circumstances will unlawful killings by the security forces be tolerated.

86. Police death squad killings should be prevented, investigated, and punished:

- (a) The Minister for Internal Security should order the disbandment of all death squads, and report to Parliament on the measures he has taken to ensure that the squads no longer operate;
- (b) The Government should establish an independent inquiry into the operation of police death squads. To secure the inquiry's integrity and independence, Kenya should invite foreign police investigators (such as the FBI, or Scotland Yard) to assist. The inquiry's work should begin by investigating the detailed allegations contained in reports of the KNCHR, and in the testimony of the police whistleblower. It should report its findings to Parliament, and be empowered to provide evidence and names for criminal prosecution to the Government;
- (c) All individuals under investigation for their involvement in police death squads should be removed from active duty during that period.

87. A review of the use of force provisions in the Constitution of Kenya, the Police Act, and the Standing Force Orders should be undertaken to bring them into line with Kenya's obligations under international law.

88. Across-the-board vetting of the current police is necessary. This needs to be part of a comprehensive reform of the police, including the creation of a Police Service Commission, as recommended by the Waki Commission.

89. The Government should ensure that its expressed commitment to centralize the records of police killings at police headquarters in Nairobi is implemented. All police stations should be required to report such cases to headquarters within 24 hours. The complete statistics of police killings should be made public by the police headquarters on a monthly basis, and the past records of police killings should be made publicly accessible.

#### *B. Killings by the Mungiki*

90. The Mungiki should immediately cease their harassment, abuse, and murder of Kenyans.

91. The Mungiki political leadership should publicly condemn killings and other abuses by their members, and take action to prevent all such crimes.

#### *C. Accountability for police killings*

92. Internal and external accountability for police should be improved through the following institutional reforms:

- (a) An internal affairs division should be created within the police force, with an element of autonomy from senior management, composed of police who are specially tasked to investigate complaints against the police;
- (b) An independent civilian police oversight body with sufficient resources and power to investigate and institute prosecutions against police responsible for abuses should be established by Act of Parliament, in line with Waki Commission recommendation 2 for the police.

*D. Criminal justice system*

93. The Attorney-General should resign. This is necessary to restore public trust in the office, and to end its role in promoting impunity.

94. Political control over prosecutions should be eliminated and the prosecutorial powers currently held by the Attorney-General should be vested in an independent Department of Public Prosecutions.

95. To reduce corruption and incompetence in the judiciary:

(a) Radical surgery needs to be undertaken to terminate the tenure of the majority of the existing judges and replace them with competent and non-corrupt appointees;

(b) Judicial appointment procedures should be made more transparent, and all appointments made following a merits-based review of the appointee;

(c) The Judicial Service Commission should be reformed so that its membership is representative; and its role in appointments, discipline and dismissal of judicial officers be clarified and strengthened;

(d) The Judicial Service Commission should create a complaints procedure on judicial conduct.

*E. Accountability for post-election violence*

96. Parliament should establish a constitutionally entrenched Special Tribunal, as recommended by the Waki Commission.

97. The prosecutor of the ICC should immediately undertake, of his own volition, an investigation into the commission of crimes against humanity by certain individuals in the aftermath of the 2007 elections.

98. Investigations and prosecutions within the regular criminal justice system should also continue. The Office of Attorney-General should publicly report within one month following the publication of this report, and in six month intervals thereafter, on the progress of investigations and prosecutions of post-election related violence.

*F. Killings in Mt. Elgon*

99. The Government should immediately set up an independent commission for Mt Elgon, modelled on the Waki Commission, to investigate human rights abuses during the period 2005-2008. The mandate of the commission should include abuses by the SLDF (including the role of officials in supporting the SLDF), abuses by the police and the military, and the reasons for the lengthy delay in Government intervention to stop the SLDF. Independent forensic analysis of the mass graves in Mt Elgon should also take place.

100. The Government should make available to the ICRC and the KNHRC, with assurances of appropriate confidentiality, the names of all those detained at Kapkota military camp, along with photographic and other documentary evidence of the detention and screening regime. This would facilitate the quest to resolve disappearances and enable a thorough accounting to be undertaken.

101. The Government should provide funding and other assistance to the families of those who remain disappeared following the police-military intervention.

102. The Government should ensure that evidence of killings, and especially the mass graves in Mt Elgon, is not destroyed. Civil society should not be prevented from visiting these sites.

103. In light of the seriousness of the allegations against the military, the units deployed to Mt Elgon should be barred from participating in UN or African Union peace-keeping operations until independent investigations have taken place. Those found to have committed abuses or to have command responsibility for abuses should be prosecuted and dismissed from the military.



104. These measures should be encouraged and supported by the international community, and particularly those countries providing military aid to Kenya.

*G. Witness protection*

105. A well-funded witness protection program that is institutionally independent from the security forces and from the Office of the Attorney-General should be created as a matter of urgency.

106. The international community should continue to support Kenya's efforts to create an effective witness protection program.

*H. Compensation and civil redress*

107. The Government should ensure that compensation is provided to the families of those victims unlawfully killed by the police or other security forces.

108. For unlawful killings and other serious human rights abuses, the one-year statutory limitation period on suits in tort against public officials should be removed.

*I. Kenya National Commission on Human Rights*

109. Police officials should cease their frequent accusations that KNCHR staff are paid by or work with criminal organizations. If the police have evidence of criminal behaviour by any person, such persons should be investigated, charged and prosecuted according to regular procedure.

110. Reports by the KNCHR should be tabled in Parliament as soon as practicable after they are presented to the Minister for Justice. The Government should provide a substantive response within a reasonable time period to all KNCHR reports.

*J. Intimidation of human rights defenders*

111. The Government of Kenya should immediately issue instructions to the police, the military, and district and provincial officials to cease and desist from acts of intimidation and harassment of human rights defenders. The text of these instructions should be made public.

112. The Government should ensure that independent investigations take place to determine who was responsible for carrying out and ordering the intimidation.

113. The Government should accept international offers to provide criminal investigation assistance to identify those responsible for the 5 March 2009 killings of two prominent human rights defenders from the Oscar Foundation Free Legal Aid Clinic, Mr Oscar Kamau Kingara and Mr John Paul Oulu.

114. The Government should report, publicly and to the UN High Commissioner for Human Rights, within 3 months following the publication of this report, on the steps it is taking to prevent and prosecute intimidation of human rights defenders.

*K. The death penalty*

115. Kenya should amend its death penalty laws so that it only applies to the crime of intentional deprivation of life, and is not mandatory following conviction.

## Latvia

### Introduction

During the period under review, the Special Rapporteur on the sale of children, child prostitution and child pornography visited Latvia from 25 to 31 October 2008 (please refer to document A/HRC/12/23/Add.1).

### Conclusions and recommendations (A/HRC/12/23/Add.1, para.81-84)

81. The Special Rapporteur notes that significant efforts have been made at the legislative level in the area of protecting the rights of the child. Nevertheless, while the number of reported cases of child prostitution and trafficking of children for sexual purposes is low, all actors with whom the Special Rapporteur met were of the view that child pornography, mainly via the Internet, was on the rise. The Special Rapporteur is of the opinion that vigilance is required and that efforts should be directed towards prevention.

82. In fact, children are increasingly vulnerable and at risk of commercial sexual exploitation, given the proliferation of tourism, easy accessibility to new methods of information technology by children, increasing demand in the sex industry and the establishment of increasingly structured trafficking networks.

83. The Special Rapporteur recalls that preventing and combating these phenomena are directly linked to the capacity of a society to adopt a holistic approach to the fundamental rights of children, paving the way for the implementation of social policies which favour children, youth and the family and the elaboration of creative and innovative responses from both the public and the private sector.

84. In this regard, the Special Rapporteur makes the following recommendations to the Government of Latvia:

- (a) Child victims of the offences covered by the Optional Protocol should not, as such, be either criminalized or penalized and that all possible measures should be taken to avoid their stigmatization and social marginalization, consistent with various recommendations of the Committee on the Rights of the Child. Such action may decrease the level of shame/fear in children in reporting cases;
- (b) Latvian law should clearly stipulate that a child under 18 years of age, irrespective of the legal age of consent to sexual activity, is unable to consent to any form of sexual exploitation, including child pornography and child prostitution;
- (c) The participation of children should be strengthened on all issues concerning them, and their views should be given due weight;
- (d) Adequate training should be provided to the relevant authorities for combating cybercrime, particularly online child pornography, in order to effectively detect violations;
- (e) Internet service providers and telecommunications companies should continue to be involved in initiatives to combat and prevent online child pornography;
- (f) While noting the existence of the Hotline for children, the Special Rapporteur recommends the strengthening of complaints mechanisms for children placed in alternative care institutions, or who are victims of violence or abuse, all the while ensuring their effectiveness and guaranteeing the protection, privacy and confidentiality of the children;
- (g) Resources available, both financial and human, to the State Inspectorate for Children's Rights should be strengthened, and there should be prompt follow-up to investigations;
- (h) The Government of Latvia should continue to ensure the provision of adequate financial and human resources to the Office of the Ombudsman to enable it to carry out its work, with full guarantees of independence and impartiality. Such activities include carrying out its decision to establish an Internet site designed to raise awareness about the issue of violence against children, and to undertake information campaigns in schools on the same issue;
- (i) The Special Rapporteur encourages the Government of Latvia to ensure that sufficient funds are made available for all child protection programmes, ensuring that a child-rights approach is integral to all implemented programmes;

(j) The Special Rapporteur also encourages the Government of Latvia to continue to explore alternatives to deprivation of liberty for children, including probation, mediation, community service or suspended sentences;

(k) Non-governmental organizations should be strengthened with qualified human resources as well as sufficient funding, including through exploring opportunities for obtaining funding from the private sector;

(l) In cases where the Government tasks non-governmental organizations with implementing child protection programmes, detailed partnership agreements should be undertaken between the Government and non-governmental organizations which recall the respective undertakings of the parties, detailed actions, expected outcomes, follow-up and evaluation modalities, as well as the allocated budget;

(m) The Special Rapporteur encourages the Government of Latvia to consider engaging the private sector for fundraising and programmatic support on issues related to the protection of the rights of the child;

(n) Awareness-raising and prevention programmes should be continued in the longer term. They should be targeted not only at children but also at parents and the general public, in order to promote behaviour and attitudes that are based on respect for dignity, and physical and moral integrity;

(o) Control and supervision of structures and programmes should be strengthened so that the quality of services provided as well as the sustainability of these projects are ensured. A child-rights approach must be integral to all implemented programmes;

(p) While noting information regarding the methods of work of Orphans' Courts and existing regulations, the Special Rapporteur encourages the Government to impose clearer guidelines and standards for the work of the Orphans' Courts, coupled with more efficient monitoring and follow-up in implementing regulations, in keeping with the principle of the best interests of the child;

(q) Standardized information-gathering should be strengthened, including by increasing efforts in terms of disaggregating data by sex, age, type of violation and measures taken, as well as harmonizing methods of gathering and processing data;

(r) Consistent with the concerns expressed by the Committee on the Rights of the Child in 2006, the Special Rapporteur recommends that Latvia strengthen and increase the efficiency and cooperation of the various institutional mechanisms and entities to monitor implementation of the Convention, including between the national and local levels;

(s) Relevant government departments, in cooperation with non-governmental organizations, should prepare annual reports on the situation of children for distribution and discussion;

(t) The media should be trained in ethical treatment of cases of the sale of children, child prostitution and child pornography, and in their role in awareness-raising on the issue;

(u) International and regional cooperation should be continued and strengthened where necessary in order to effectively combat and prevent child sex tourism and online child pornography;

(v) In the light of the current financial crisis, the Government of Latvia should make all possible efforts to ensure that financing of child protection policies and programmes is prioritized.

## Maldives

### **Introduction**

During the period under review, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression visited the Maldives from 1 to 5 March 2009 (please refer to document A/HRC/11/4/Add.3).

### **Conclusions and recommendations** (A/HRC/11/4/Add.3, para.53-70)

53. The Special Rapporteur commends the steps taken by President Nasheed and the new Government of the Maldives in implementing a series of reforms in the context of democratic change with a view to fully assuming human rights considerations on public policies in the country. He welcomes the process of constitutional and legislative reform initiated in 2005, which he considers an essential opportunity for the country to adhere to democratic principles and good governance. The Special Rapporteur was also impressed by the forward looking plans that were presented to him by the different authorities that he met with during his visit in relation to enhancing freedom of expression.

54. Recognizing the positive steps taken by the Government, and in the spirit of strengthening the transition effort, the Special Rapporteur proposes the following recommendations:

#### *A. Public consultation*

55. It is clear that all sectors of the Maldivian population recognize the importance of the transition period and value the efforts made by the Government, however it was also noted through discussions with various interlocutors that the population deems it necessary for the authorities to establish a mechanism of public communication and consultation with regard to the measures that are being taken. It is recommended that such a mechanism of communication be established which would generate active participation of citizens in the reforms being implemented. The Special Rapporteur recommends that the Government implement its plans to establish a permanent mechanism within the administration, in the form of a political communications officer, to ensure that the different sectors of society are consulted about the ongoing reform efforts.

#### *B. Decentralization*

56. The Special Rapporteur welcomes the process of decentralization initiated by the Government with the aim of bringing State public services to the seven different provinces. Decentralization should be about empowering people in islands and atolls to make certain decisions for themselves, through their elected functionaries, who come from those regions or are resident there. In order to ensure that all members of society are afforded the same opportunities in terms of access to information the Special Rapporteur encourages the Government to consolidate the process by establishing public broadcasting links in each province, taking into consideration the promotion and protection of island dialects.

#### *C. Media reform package*

57. The Special Rapporteur commends the steps being taken by the Government to ensure that the media reform package initiated in 2004 is fully implemented in order to guarantee freedom of expression in the country. In this context the Special Rapporteur urges the Government to consider concerns raised about the draft media Bills, including the Bill on Freedom of Information, Bill on Registration of Newspapers and Magazines, Media Council Bill and the new Defamation Bill, and to ensure that they are revised accordingly to meet international standards.

58. The Special Rapporteur recommends that the Parliament accelerate the process of approval of the laws that would establish Broadcasting Corporation and the Telecommunications Authority as fully independent public bodies.

#### *D. Defamation*

59. The Special Rapporteur encourages the Government to ensure that cases of defamation be established by law as a civil and not a criminal offence and be totally eliminated with regards to State officials in reference to their actions in public office. The Bill should be revised to reflect an absolute

defence of truth and, in cases involving statements on matters of public concern, the plaintiff should bear the burden of proving fallacy; statements of opinion and value judgements should either be absolutely protected or benefit from a very high degree of protection. A broad “reasonable publication” defence should apply to statements relating to matters of public interest; a wide range of statements of particular importance, such as those delivered in the Peoples’ Majlis, should receive absolute protection and consideration should be given to adding a new category of statements which receive protection where made in good faith, such as reports of crime.

#### *E. Public broadcasting*

60. While public broadcasting enterprises TV Maldives and Voice of the Maldives reach out to over 90 per cent of the population and satisfy a needed public service, given its importance and in order to maintain objectivity, it is essential that the public broadcasting corporation be established by law as an independent State body whose members should be elected by the Parliament. The Special Rapporteur was informed that such legislation is pending in Parliament and he would urge the Government to ensure it is adopted swiftly.

#### *F. Access to information*

61. Access to Government-held information is central to the media law reform programme, and lack of access denies all people’s access to information they could otherwise read in their newspaper, while creating serious obstacles to professional reporting. The development of a draft Bill on Freedom of Information constitutes a major step forward in addressing the issue and will strengthen democracy and good governance. Freedom of information legislation should be public and guided by the principle of maximum disclosure: it establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances. The Special Rapporteur welcomes plans by the Government to implement legislation in freedom of information. He further encourages the establishment of an office within the administration which would be responsible for access to information. Similar offices could also be established in each of the provinces. The Special Rapporteur welcomes the President’s decision to establish a Decree on access to information as a guarantee to transparency and would encourage the Government to establish the appropriate mechanisms and bodies in order to guarantee that this right is implemented swiftly.

#### *G. Private media and community broadcasting*

62. The Special Rapporteur commends the Government’s decision to develop private media and encourages it to maintain plurality and diversity to guarantee freedom of expression and specifically suggests the possibility of establishing community radio in individual islands or provinces when created. Community-based broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion. Such programmes should encourage active participation of the community in their initiation, production and presentation.

63. In the process of privatization of media enterprises a special effort should be made to ensure that the diversity and plurality of views and opinions are maintained; in this regard the Special Rapporteur would encourage the Parliament to introduce anti-monopoly legislation particularly with reference to communication.

#### *H. Telecommunications*

64. The Special Rapporteur welcomes the working plans and regulations established by the telecommunications authority in promoting diversity in terms of the media concessions, in preserving a segment of frequencies for non-profit public use and communities with limited financial means; in particular he welcomes the proposal to implement a plan to make Internet accessible to all communities in the country including the establishment of a fund to subsidize this service in communities that are unable to afford it. The Special Rapporteur emphasizes that access to communication is essential not only for freedom of expression but also to participate in the national development plan and exercise the right to development.

65. The mandate of the information ministry needs to be clearly defined in law and the Special Rapporteur recommends that the Government take measures to ensure that the Telecommunications Act is passed to ensure independence of the Telecommunications Authority.

*I. Internet*

66. While the Special Rapporteur was impressed by the high-level of access of all the population to mobile phone use he would suggest that there is a need to ensure that Internet access is available for all members of the society given that access to information is important for economic development.

*J. Professional training for journalists*

67. Since open media diversity is a new phenomenon in the country the Special Rapporteur suggests that the Government develop professional training courses and capacity-building for journalists with the priority of addressing the younger generation.

*K. Civil service*

68. Civil servants are defined by being part of the State and must respect their work accordingly. They should however also have the right to have an opinion on public issues and should be allowed to enjoy political participation. The Special Rapporteur recommends to the Majlis that the legislation on civil service should not in any way limit the right to freedom of expression and political participation of civil servants. He would further encourage the Government to consult with civil servants to ensure that they are fully aware of their rights and responsibilities in relation to public participation and freedom of expression. Information seminars could be developed for this purpose in each of the provinces.

*L. Freedom of expression and religion*

69. The Special Rapporteur reiterates the recommendations made by the Special Rapporteur on freedom of religion and belief, Asma Jahangir, following her official visit to the Maldives in 2006. In her recommendations she encouraged the Government “to give serious consideration to including the right to freedom of religion or belief in the new draft of the Constitution. This right should not be limited to citizens of the Maldives, but should be extended to all persons in the Maldives.”

70. The Special Rapporteur hopes that the international community will appreciate, at this key moment in the history of the country, the urgency of providing the Government of Maldives with the kind and level of sustainable assistance that is indispensable for reaching the described goals and allowing the country to succeed in its transition towards democracy, and urges it to do so.

## Malaysia

### Introduction

During the period under review, the Special Rapporteur on the right to education visited Malaysia from 5 and 13 February 2007 (please refer to document A/HRC/11/8/Add.2).

### Conclusions and recommendations (A/HRC/11/8/Add.2, para.84-87)

84. Malaysia has invested a significant proportion of its resources in the education system and has achieved high levels of school attendance, particularly in primary schools, partly as a result of the enshrinement in law of the principle of compulsory education. It has also enabled young girls and adolescents to have full access to education at all levels. However, economic obstacles continue to hamper access to education, inasmuch as the cost-free principle has not yet been guaranteed.

85. There is also another type of difficulty preventing full exercise of the right to education for all inhabitants of the country. The Special Rapporteur considers that one of the most serious problems is the requirement of a birth certificate as an essential precondition for enrolment in recognized educational institutions, particularly if account is taken of the extremely strict conditions for obtaining such a certificate, which exclude a large part of the population.

86. Another major challenge facing Malaysia, in the view of the Special Rapporteur, is the need to guarantee the rights of students and faculty members, in accordance with the principles applied by any modern democratic society and the international standards of human rights. Both students and faculty members must have the possibility of full and transparent participation in all processes that concern them and, above all, their rights to freedom of expression and association must be respected. The Special Rapporteur is convinced that this would make it possible to consolidate the democratization process which the Government is interested in promoting.

87. The Special Rapporteur recommends the following action by the Government of Malaysia:

- Ratify at least the basic instruments of international protection of human rights, that is to say, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and withdraw its reservations to the Convention on the Rights of the Child. At the same time, he suggests that Malaysia should ratify the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education
- Guarantee the principle of cost-free education, irrespective of membership of an ethnic group or citizenship, at least in the case of primary education, with gradual extension to the secondary level
- Decentralize the education system, so that local authorities and all actors in the educational process may have a hand in the design of education policies relevant to them
- Establish policies that enable preschool education and infant care to be made the responsibility of the State, thereby guaranteeing access to those services on an equal footing for all children
- Guarantee that all educational programmes offered by duly authorized public and private educational institutions receive academic recognition in accordance with the Malaysian Qualification Act 2007
- Establish an indigenous affairs unit in the Ministry of Education, with links to the indigenous communities, to deal with educational matters affecting all indigenous communities in the country, including those located on the island of Borneo, so that the needs of these communities

and their views on ways of improving the education of their members can be integrated into educational policies

- Develop statistical policies and programmes providing constant information on the number of children without access to public education, including refugee children, asylum-seekers, stateless children, children of (legal and illegal) migrant workers, street children, throughout the territory of Malaysia, disaggregated by state, ethnic origin, gender, disabilities, rural and urban areas, with a view to establishing a policy and appropriate measures for including such children in the national education system
- Revise the Education Act 1996 so that children who do not have a birth certificate may enrol in educational institutions, thereby guaranteeing the right of education for all children in the territory of Malaysia, as prescribed by international standards on the subject, regardless of whether they are refugees, asylum-seekers, stateless children, children of legal or illegal migrant workers or street children
- Develop intercultural linguistic initiatives in all educational centres in Malaysia, in order to strengthen harmonious coexistence between the country's different ethnic communities
- Take the necessary measures to implement a gender perspective in education at all levels, including teacher training and the establishment of a clear policy on textbooks. It is also recommended that policies be adopted to encourage women to take up decision-making posts in all fields
- Continue its efforts in the field of education in order to promote the equality of girls, adolescents and women
- Introduce into the school curriculum courses concerned with sexual and reproductive health education and human rights. For this purpose, the Special Rapporteur recommends implementation of the first phase of the World Programme for Human Rights Education<sup>29</sup>
- Take effective measures to expand significantly the coverage of university education
- Introduce amendments to the Universities and University Colleges Act, so as to guarantee recognition of the right of teachers and pupils to freedom of expression, freedom of assembly and their right to participate in political activity; and amend the rules on elections of student representatives, so as to ensure that they are conducted in a truly democratic spirit. Similarly, it is recommended that the disciplinary rules applicable to students and teachers should be amended to prevent any impairment of university autonomy.

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<sup>29</sup> In conformity with General Assembly resolution 59/113.



## Mauritania

### Introduction

During 2009, Mauritania was visited by two special procedure mandate holders. The Working Group on arbitrary detention visited from 19 February to 3 March 2008 (please refer to document A/HRC/10/21/Add.2). The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the country from 20 to 24 January 2008 (please refer to document A/HRC/11/36/Add.2).

**Conclusions** of the Working Group on arbitrary detention Working Group on arbitrary detention (A/HRC/10/21/Add.2, para.84-88)

84. The Working Group welcomes the many positive measures taken by the Government which have led to a significant improvement in the situation, as acknowledged by the overwhelming majority of the persons contacted by the Working Group. Many of the persons interviewed pointed to a genuine political will to build democracy and to strengthen the rule of law, in particularly difficult economic circumstances.

85. At the same time, the Working Group notes some shortcomings, in particular related to access to counsel and interpretations of the rules of Sharia in the Criminal Code and the new Code of Criminal Procedure, which must be corrected to ensure observance of international standards and to avoid any arbitrary detention.

86. Nevertheless, the Working Group remains concerned about the gap between practice and the laws in force. The credibility of a democratic Government is dependent upon its ability to give effect to the guarantees enshrined in law.

87. In a number of areas, laws that comply with international standards have been adopted, but they have not been translated into practical changes. The main concern in this respect is the ineffectiveness of the prosecutor's oversight of police activity in general, and police custody in particular. The Working Group is concerned about the difficulties related to access to counsel and legal aid, which may have a negative impact on respect for the adversarial principle and the principle of equality of arms.

88. Furthermore, the Working Group is concerned about the overall perception that it is first and foremost the members of certain population groups who are affected by detention, and that other people, who are protected by their families or their ethnic groups, are able to avoid it. The Working Group would like to emphasize that the credibility of the justice system is dependent upon the application of the law in a non-discriminatory manner to all, and that the authorities should make special efforts to combat any inequality and, by ensuring transparency in the administration of justice, avoid any semblance of discrimination.

**Recommendations** (A/HRC/10/21/Add.2, para.89-91)

89. In the light of the foregoing and the observations made, the Mauritanian Government is invited to take the measures listed below in the following nine areas.

#### *A. Detention under criminal law*

(a) Amend the legislation, or stipulate in the jurisprudence of the Supreme Court of Justice, the time limits for police custody and pre-trial detention and the conditions for their extension, so as to remove any ambiguity;

(b) Take the measures necessary to strengthen and make effective the oversight of police activities by prosecutors;

(c) Ensure that the mechanisms established by the law<sup>30</sup> to ensure monitoring and supervision of places of detention are set up as soon as possible and ensure independent oversight of places of detention, in particular by carrying out unannounced visits to them. The Working Group encourages the Islamic Republic of Mauritania to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(d) Assign to an independent and impartial body with effective authority and the power to initiate inquiries promptly the task of dealing with complaints of actions by State agents, in particular the police;

(e) Explicitly establish in the law or in the jurisprudence of the Supreme Court that an admission of guilt may in no circumstances constitute the sole proof with which to establish guilt;

(f) Replace corporal punishment, as provided for in the Criminal Code, with clearly defined prison sentences so as to avoid situations in which detention is virtually endless if detainees find it impossible to pay compensation and are thus not released;

(g) Oblige police officers to inform persons in police custody of all their rights, and monitor implementation of this obligation;

(h) Improve detention conditions at police stations.

#### *B. Defence*

(a) Review the legislation, and above all legal practice, to guarantee an effective and high-quality defence, so as to ensure full respect for international obligations regarding the presumption of innocence, the adversarial principle and equality of arms;

(b) Revise article 58 of the Code of Criminal Procedure to ensure the active presence of counsel from the very start of police custody, without the need for the prior consent of the prosecutor, for all detainees without exception, including persons suspected of committing acts against State security;

(c) Implement the legal aid mechanism as soon as possible to ensure an effective defence for all persons accused of offences punishable by imprisonment, and ensure appropriate remuneration for attorneys assigned to provide such aid;

(d) Facilitate in-service training of attorneys and, in particular, make them aware of international standards of human rights and due process, and support ethical training for attorneys.

#### *C. Sharia rules*

(a) Reformulate article 306 of the Criminal Code so that it is more precise, by setting out the acts that are punishable under this article;

(b) Amend the legislation to ensure that the prohibition of discrimination against women is respected, and to prevent women who are the victims of acts of violence from being accused of adultery if they file complaints against the perpetrators of such acts.

#### *D. Judicial branch*

(a) Take measures to facilitate the recruitment of women and members of underrepresented communities in the administration of justice, so that the diversity of society is reflected;

(b) Continue efforts already undertaken to ensure the integrity of the judiciary;

(c) Update training programmes; provide the resources necessary to ensure a solid basis for common university training, and introduce bilingualism into the judiciary;

(d) Make the members of the judiciary aware of the role they play in overseeing the criminal police and the penitentiaries.

#### *E. Penitentiary system*

(a) Ensure a genuine separation of responsibilities between bodies assigned the task of investigation and those responsible for detaining suspects;

(b) Supplement the reform of the penitentiary administration by establishing a specialized corps of prison guards;

<sup>30</sup> Article 10 of Order No. 2007-012 of 8 February 2007, on the organization of the judiciary; article 638 of the Code of Criminal Procedure, which provides for the post of judge for the enforcement of sentences; and article 651 on visits by the prosecutor, the investigating judge and the prison monitoring commissions.

(c) Implement the provisions contained in the legislation on parole, and ensure that all detainees have effective access to this mechanism;

(d) Inform all detainees of the procedure for applying for parole by distributing brochures or using radio programmes to explain the procedures and the relevant criteria;

(e) Continue efforts to improve detention conditions in prisons; separate categories of detainees, in particular those awaiting trial from those who have been convicted;

(f) Ensure that all sentences are communicated in writing.

#### *F. Detention of migrants*

(a) Provide a legal framework for pre-trial detention in keeping with the relevant international standards;

(b) Avoid detention of migrants where possible. When such detention is unavoidable, ensure that detention conditions meet international standards;

(c) Ensure that any person detained under the migration law has an effective legal remedy enabling them to challenge the legality of administrative decisions regarding detention, expulsion and refoulement;

(d) Extend, in practice, the right to assistance from court-appointed counsel to foreigners detained with a view to their expulsion or refoulement.

#### *G. Training*

(a) Raise awareness of human rights among all those involved in the field of criminal justice;

(b) Hold in-service training courses for police officers, gendarmes, judges and prosecutors;

(c) Support bilingualism, or even multilingualism, among all those involved in the field of criminal justice;

(d) Ensure the constant updating of study programmes to reflect the latest developments in the jurisprudence of international bodies.

#### *H. Detention in the Neuropsychiatric centre*

(a) Establish a legal framework to avoid situations of arbitrary detention and to protect doctors who decide that a person should be detained;

(b) Take measures to guarantee that any person who has been involuntarily interned has a legal remedy to challenge the legality of the decision to intern them in a psychiatric institution, and establish a regular review procedure to determine whether the involuntary internment should continue.

#### *I. Discrimination and corruption*

(a) Make it part of normal procedure for members of the judiciary to declare their assets when first appointed, and strengthen oversight of disciplinary action and penalties;

(b) Adopt a code of ethics for all the legal professions and the members of the judiciary, and establish mechanisms to ensure respect for such codes so as to restore the public's trust in the justice system;

(c) Plan for the adoption of rules on incompatibility, obliging members of the judiciary to reclude themselves when they are linked by family or tribal ties to the attorney of one of the parties;

(d) Ensure access to interpretation services at all stages of the criminal procedure, and ensure that any person in detention is informed of their rights;

(e) Take steps to combat discrimination by following the recommendations made in the forthcoming report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Mauritania.

90. The Working Group would like its recommendations to be taken into consideration in the reform process undertaken by the Government of the Islamic Republic of Mauritania.

91. The Working Group urges the international community and the Office of the United Nations High Commissioner for Human Rights to provide the technical and financial support required to strengthen Mauritania's national capacities in the field of human rights.

**Conclusions and recommendations** of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/11/36/Add.2, para.78-86)

78. The Special Rapporteur recommends the adoption by the Mauritanian Government of a dual strategy - political, legal and institutional, on the one hand, and cultural and ethical, on the other - in order to combat the manifestations of ethnic or racial discrimination that have deeply marked Mauritanian society.

79. On the political front, the Special Rapporteur recommends that the executive, the legislature and the judiciary should restate, publicly and consistently, their political determination to combat all forms of racism and discrimination and, in the long term, to promote democratic, egalitarian and participatory multiculturalism based, on the one hand, on the recognition, respect and promotion of cultural diversity and, on the other, on the systematic encouragement of interaction and cross-fertilization between the communities in order to encourage community partnership in the full acceptance of the historical truth of discrimination, and of the sensitive task of creating a feeling of belonging to one nation.

80. On the legislative front, the Special Rapporteur recommends the insertion of specific provisions on racial and ethnic discrimination in the Criminal Code. Notwithstanding the existence of provisions proclaiming the principles of equality in various items of legislation, including the Constitution, he strongly recommends the adoption of comprehensive legislation against all forms of discrimination, incorporating a definition of discrimination that is applicable in all areas of social life and that contains all the elements of article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

81. The Special Rapporteur recommends that, in order to focus on the central role of social multiculturalism and strengthen the ongoing drive towards democracy, the Constitution should be amended to include two additional elements: the affirmation that Mauritanian society is built on democratic, egalitarian and participatory multiculturalism, and the recognition of the main ethnic groups or communities in society and their languages and cultures. Given that language policies have in the past been used as a tool that has helped polarize the various communities, he recommends that, in addition to Arabic, Pular, Soninke and Wolof should be given constitutional status as official languages.

82. In parallel with the adoption of the new Act prohibiting slavery and slavery-like practices, the Special Rapporteur recommends the adoption of measures under the Act to make it possible, over and above the criminal liability of individual slave-owners, for victims to bring civil suits, notably for restitution or compensation. He further recommends that support measures should be put in place as a matter of priority, to publicize the contents of the Act and, in the longer term, mitigate the impact of slavery on people's attitudes and behaviour.

83. At the institutional level, the Special Rapporteur recommends that a national assessment should be made of the historical and cultural underpinnings of discrimination. He therefore recommends the establishment by the National Human Rights Commission of an independent commission based on the principle of the democratic participation of all political movements, affected communities, traditional religious and spiritual leaders and civil society actors.

84. The commission should tackle the main issues in Mauritanian society which give rise to discrimination, including the issue of slavery and caste and political practices which, in recent years, have made ethnicity a political tool and have widened the gap between the various communities. It should be mandated, on the one hand, to draft a white paper on the status, root causes, manifestations and consequences of the discrimination which has scarred Mauritanian history and, on the other hand, to develop on that basis a national programme of action against all forms of discrimination to help counteract the consequences of the injustices and discrimination experienced by Mauritanian society. It should pay particular attention to key State institutions such as the armed forces and the justice system and could, in the short term, apply the principle of positive discrimination based on detailed demographic indicators showing ancestry and ethnic origin.

85. In the context of the drive towards democracy noted by the Special Rapporteur during his visit, efforts to combat all forms of discrimination should be reflected in the adoption of a law establishing an independent standing national commission, in accordance with the Paris Principles, to uphold human rights, combat discrimination and promote democratic, egalitarian and participatory multiculturalism.

86. Alongside the political, legal and institutional strategy, the Special Rapporteur recommends the adoption of a cultural and ethical strategy aimed, in the long term, at the comprehensive and permanent eradication of the cultural and traditional root causes of discriminatory culture and attitudes, and the achievement of community partnership through education, culture and communication, for example. Particular attention should be paid to developing a national programme of education by, inter alia, recording and teaching history. This programme should aim to reunite society through shared memory and common values based on the promotion of society's rich cultural diversity and the reinforcement of national unity. Under this strategy, it is vital to work on collective memory in order to eliminate community grudges - particularly in respect of unresolved humanitarian issues - by full recognition of all those issues, including the systematic killing of black Mauritanian army officers. In pursuit of this national catharsis, the Special Rapporteur recommends linking the drive towards democracy with the achievement of multicultural community partnership on the basis of the following three elements: historical truth; justice and redress; and reconciliation.

## Mexico

### Introduction

During the period under review, the Special Rapporteur on the human rights of migrants visited Mexico from 9 to 15 March 2008 (please refer to document A/HRC/11/7/Add.2).

### Conclusions and recommendations (A/HRC/11/7/Add.2, para.81-95)

81. Mexico's progress in developing and implementing programmes to protect the human rights of migrants is evident, in terms of both the Government's capacity and willingness. The Special Rapporteur witnessed notable efforts by Mexican authorities to improve the handling of detention centres (especially overcrowding), training of border officials, return, and protection of children. Nevertheless, there are many issues of concern that warrant further attention and resources and, accordingly, the Special Rapporteur wishes to make the following suggestions for further consideration and action.

#### *A. Recommendations to the Government of Mexico*

##### Legal revisions

82. Regarding the expulsion of migrants from its territory, the Special Rapporteur recommends that the Government of Mexico review its laws regarding expulsion (article 33 of the Constitution and corresponding practices stipulated in the General Population Act) and formulate policies according to international human rights law standards, that migrants are expelled only pursuant to a decision taken by the competent authority pursuant to the law. In addition, the Special Rapporteur, following up on recommendations by the Committee on Migrant Workers, recommends that Mexico should consider taking measures to withdraw its reservation to article 22, paragraph 4, of the Convention on Migrant Workers.

83. Regarding the criminalization of irregular migration, the Special Rapporteur welcomes the reform of the General Population Act and urges its harmonization with international law and reflection of attendant protections in practice. He is concerned with the punitive measures given to irregular migrants, including migrants involved in smuggling and trafficking. Now that irregular migration has been decriminalized by the reforms, and following up on recommendations by the Committee on Migrant Workers, the Special Rapporteur recommends that the law should, inter alia, implement the classification of illegal entry into the country as an administrative rather than criminal offence.

84. The Special Rapporteur again welcomes the efforts made by Mexico to implement the Convention on Migrant Workers, and notes that Mexico recently made a declaration under article 77 recognizing the competence of the Committee to receive communications from individuals. The Special Rapporteur regrets that this reluctance may signify a lack of complete support for the Convention itself. In the light of Mexico's exemplary efforts in the worldwide promotion of migrants' rights, the Special Rapporteur underscores the crucial nature of this element in the promotion of the Convention.

85. The Special Rapporteur received inconsistent information about at what age the federal Government and the state agencies considered migrant children as being legally "minors" and therefore deserving of additional protection. He also noted that there seemed to be differences according to sex, with girls eligible for protection longer than boys, which illustrates gaps in protection and lack of coherence in policy. The Special Rapporteur therefore recommends the revision of what is legally considered a "minor" at both the federal and state levels, and suggests that "minors" be inclusive, regardless of sex, of all children under the age of 18.<sup>31</sup>

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<sup>31</sup> Note article 1 of the Convention on the Rights of the Child, to which Mexico is a part, which states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

86. Despite some programmes in place, the Special Rapporteur noted a general absence of public consciousness about the severity and extent of migrant child labour practices in Mexico, and calls for immediate measures to be taken by the Government of Mexico including: an enhanced national educational campaign against child labour, the further implementation of legislation that Mexico already has aimed at making child labour practices a crime, and prosecution and punishment of hiring a minor for labour at both the federal and state levels.

#### Implementation and practice

87. The Special Rapporteur takes note of efforts made by the Government of Mexico to professionalize and train its police forces and border control officials. He welcomes initiatives by the INM to organize technical training courses for administrative officials focusing on the protection of the human rights of migrants. The Special Rapporteur invites Mexico to continue these efforts, especially at the local level, and in particular for INM personnel, Federal Preventative Police personnel supporting the INM in the area of migration management, and officials working for the Beta Groups. He calls on the Office of the United Nations High Commissioner for Human Rights to assist with such trainings and capacity-building efforts.

88. The Special Rapporteur takes note of the rapid manner in which the authorities endeavour to return undocumented migrants to their countries of origin once detained in migrant holding centres. This varies by country of nationality and, as such, the corresponding bilateral agreement Mexico has with that country. However, he also observed that there were gaps to the extent Mexico had formulated bilateral agreements encompassing conditions of return with many countries producing migrants to Mexico. He therefore recommends that Mexico review its current bilateral arrangements with consulates of countries in which migrants in Mexico are found and formulate more specific provisions for the following: (a) cost of return; (b) handling of reception of migrants; (c) transport from border or consular office back to family or other safe destination; (d) provision of immediate medical care if necessary; and (e) provision of clothing, food and shelter to be used in the interim, if applicable.

89. The Special Rapporteur observed gaps with regard to consular protection, as many migrants claim that they were offered no legal representation nor informed of their date of departure. As such, this limits their knowledge about their rights, even if a migrant is in an irregular situation. The Special Rapporteur recommends that the Mexican authorities notify the consular or diplomatic authorities of the State of origin without delay whenever a migrant is arrested or detained.

90. The Special Rapporteur observes the involvement of the armed forces and private security personnel in the handling of migrants, a practice not afforded to them under international nor federal law. He recommends that Mexico, and more specifically the National Institute for Migration, take appropriate steps to ensure that migration control and securing of migrants are carried out exclusively by the competent authorities and that every violation in this regard is promptly reported.

91. Regarding the abuse of domestic workers, the Special Rapporteur recommends that the Government of Mexico devote further resources to improving the data on migrant work in the domestic sphere, including but not limited to the research of numbers and nationalities of domestic workers and employers of domestic migrant workers. Further, he recommends that it examine potential abuse in the recruitment process, through investigations involving recruitment agencies and registration systems for migrant workers destined for the domestic sphere. In addition, the Special Rapporteur recommends that the Government create a mechanism whereby workers, even if in irregular stay, may lodge complaints of abuse regarding unfair labour practices in the domestic sphere and further develop support services and shelters for victims of abuse in the domestic sphere.

92. The Special Rapporteur recommends that appropriate legislative reforms address impunity of human rights violations, as a major weakness of the judicial system. In this regard the Special Rapporteur recommends to the Government that it establish obligations to report annually the number of cases that involve judicial actions such as arrests and convictions for the persecution of perpetrators of violations of the human rights of migrants, particularly, of the number of cases of judicial actions against perpetrators of child labour abuses.

*B. Recommendations to the United Nations*

93. While the Special Rapporteur was pleased to learn about the various United Nations agencies and country offices involved in activities to protect women and children included in the foreign-born population, he observed a fragmented approach among them, composed of disparate projects and programmes, which could benefit from increased cohesion. As such, he recommends that the United Nations Resident Coordinator, in conjunction with the International Organization for Migration, the Office of the High Commissioner for Human Rights, and specialized agencies, (a) review existing programmes that work to protect the rights of migrants and (b) integrate them for a more comprehensive approach to promote the protection of migrants within the United Nations system. This may be done in accordance with United Nations offices in, inter alia, Guatemala, Honduras, El Salvador and the United States. Considering the significant flow-through of the migration population, the Mexico offices of the United Nations have a leadership role to play in this regard.

94. The Special Rapporteur, at the time of drafting this report, was pleased to receive the recommendations issued by the International Meeting on the Protection of the Rights of Children in the Context of International Migration, “Migration and human rights of children”, organized jointly by the Ministry of Foreign Affairs and the Office of the High Commissioner for Human Rights in Mexico City, held from 30 September to 1 October 2008. As such, he would like to reiterate the call to intergovernmental institutions such as the United Nations to support initiatives to promote migrant children’s rights protection, and recommends that the United Nations encourage inter-institutional coordination at the national level, including through specific mechanisms and with the participation of the civil society, consular services, local governments and the private sector.

95. The Special Rapporteur welcomes the reforms of the General Population Act and the recent initiative of the Senate of the Republic of Mexico to recognize the competency of the Committee on Migrant Workers to hear individual communications, established in articles 76 and 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. He is pleased to learn that the Senate Commission on Population and Development is collaborating to form a working group, in coordination with the office in Mexico of the High Commissioner for Human Rights, to put such initiatives into practice. The Special Rapporteur therefore recommends that this office, in cooperation with the International Organization for Migration and various NGOs working on migration issues, work closely with the Congress to ensure harmonization of domestic law and policy with international standards.



## Moldova

### Introduction

During the period under review, two special procedure mandate holders visited Moldova. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited from 4 to 11 July 2008 (please refer to document A/HRC/10/44/Add.3). The Special Rapporteur on violence against women, its causes and consequences visited Moldova between 4 to 11 July 2008 (please refer to document A/HRC/11/6/Add.4).

Conclusions of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/10/44/Add.3, para.81-89)

81. The Republic of Moldova has come a long way in institution building and human rights protection since independence in 1991. By acceding to numerous international human rights treaties, it has sent strong signals about its commitment to put the rights of individuals at the centre of its legal system and its public policy formulation. Important steps have been taken to integrate these international standards into the national legal framework, including through the criminalization of torture. However, some gaps remain, such as the statute of limitations that applies to the crime of torture.

82. On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, often supported by forensic medical evidence, the Special Rapporteur concludes that ill-treatment during the initial period of police custody is widespread. Torture methods such as severe beatings, with fists, rubber truncheons, and baseball bats, including on soles, electro-shocks, asphyxiation through gas masks, putting needles under fingernails and suspension are often used in order to obtain confessions from suspects.

83. The commission of acts of torture is facilitated by the lack of awareness and action of other stakeholders in the criminal law system (such as prosecutors, judges, the medical profession and lawyers) and by the excessive length of police custody. Detention for several weeks or even months in police cells which do not comply with international minimum standards often amount to inhuman and degrading treatment.

84. Whereas overall conditions in penitentiary institutions have improved over recent years, overcrowding, diseases and inter-prisoner violence, as well as discriminatory practices fuelled by corruption remain highly problematic. Furthermore, the Special Rapporteur is concerned about the severe restrictions on contacts with the outside world.

85. The Special Rapporteur, recognizing that some first steps have been taken to address impunity, has found that the existing complaints mechanisms are not effective. He is particularly concerned that the burden of proof rests on the alleged victim of ill-treatment. In light of the high number of allegations he received, he concludes that only a small minority of perpetrators face criminal prosecution. Additionally, the penalties imposed are not commensurate with the gravity of the crime of torture. He further identified significant gaps with regard to the State's obligations in the areas of compensation and rehabilitation.

86. The Special Rapporteur warmly welcomes the establishment of the National Preventive Mechanism. Since such monitoring bodies are among the most effective means of preventing torture, this, in his view, constitutes a major step towards preventing torture and ill-treatment in the future.

87. With regard to violence against women, the Special Rapporteur is concerned about the scale of trafficking in women and girls, and the inadequate prevention and protection afforded by the State as well as the lack of measures to bring officials involved in facilitating trafficking to justice. He is similarly concerned about the lack of infrastructure for victims of trafficking and domestic violence.

88. With regard to the Transnistrian region of the Republic of Moldova, the Special Rapporteur comes to similar conclusions as for the rest of the country concerning the widespread use of ill-treatment by the police to extract confessions and the conditions of detention in police and penitentiary facilities. He regrets that no effective monitoring and complaints mechanisms, such as the National Preventive Mechanism are in place in the Transnistrian region of the Republic of Moldova.

89. The death penalty is still enshrined in the “legislation” of the Transnistrian region of the Republic of Moldova and no steps were taken to abolish the death penalty. The Special Rapporteur is very concerned about life imprisonment in complete solitary confinement of persons sentenced to death or life imprisonment. Life-long detention in such conditions amounts to torture.

**Recommendations** (A/HRC/10/44/Add.3, para.90)

90. In the spirit of cooperation and partnership, the Special Rapporteur recommends that the Government of the Republic of Moldova take decisive steps to implement the following recommendations:

(a) Impunity

Abolish the statute of limitations for crimes of torture;  
Establish effective and accessible complaints mechanisms; and protect complainants against reprisals;

An independent authority with no connection to the body investigating or prosecuting the case against the alleged victim should investigate promptly and thoroughly all allegations of torture and ill-treatment ex-officio; an independent forensic expert should carry out an examination in respect of all allegations of torture and ill-treatment; the Forensic institute should be equipped accordingly.

(b) Safeguards and prevention<sup>32</sup>

Reduce the period of police custody to a time limit in line with international standards (maximum 48 hours), after which transfer the detainees to a pre-trial facility, where no further unsupervised contact with the interrogator or investigator should be permitted;

Ensure that no confessions made by persons in custody without the presence of a lawyer that are not confirmed before a judge are admissible as evidence against the persons who made the confession; Shift the burden of proof to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress; Judges, prosecutors and medical personnel should routinely ask persons arriving from police custody how they have been treated; Consider video and audio taping interrogations;

Regularly and following each transfer of a detainee undertake medical examinations;

Bring the legal safeguards for administrative detainees in line with international standards (limit to 48 hours, access to a lawyer etc.);

Ensure that the sound legal basis of the National Preventive Mechanism translates in its effective functioning in practice, including through allocation of budgetary and human resources.

(c) Institutional reforms

Continue and accelerate reforms of the prosecutor’s office, the police and the penitentiary system with a view to transforming them into truly client-oriented bodies that operate transparently, including through modernized and demilitarized training; Strengthen the independence of the judiciary; make judges aware of their responsibilities with regard to torture prevention;

Conceive the system of execution of punishments and its legal framework in a way that truly aims at rehabilitation and reintegration of offenders, in particular through abolishing restrictive detention rules

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<sup>32</sup> For more specific comments and recommendations see table in the appendix.

and maximizing contact with the outside world; Take further steps to improve food and access to health care; Strengthen further non-custodial measures before and after trial.

(d) Compensation and rehabilitation

Incorporate the right to reparation for victims of torture and ill-treatment into the domestic law together with clearly set-out enforcement mechanisms; lend full support to non-governmental institutions working on the rehabilitation of torture victims and protect the staff working for those institutions.

(e) Women

Ensure adequate funding for the existing infrastructure to support victims of domestic violence and trafficking and extend the network of centres providing psycho-social, legal and residential services to all parts of the country taking into account the increased vulnerability of women and girls in rural areas;

Establish specialized female law enforcement units;

Devise concrete mechanisms to implement the new Law on preventing and combating family violence in practice, including through a Plan of Action for its implementation and monitoring, including through allocation of adequate budgetary and human resources to relevant State bodies.

(f) Health-care facilities/psychiatric institutions

Consider ratifying the Convention on the Rights of Persons with Disabilities and ensure respect for the safeguards available to patients, in particular their right to free and informed consent in compliance with international standards (see also report A/63/175); Allocate funds necessary to reform the system of psychiatric treatment.

(g) Transnistrian region of the Republic of Moldova

In addition to the introduction and implementation of legal safeguards, such as *inter alia* the reduction of the length of police custody to a maximum of 48 hours and the medical examination of newly arrived detainees in places of detention, establish independent monitoring of places of detention; Criminalize torture and abolish the death penalty de-jure. Stop immediately the practice of solitary confinement for persons sentenced to death and to life imprisonment.

(h) Recommendation to the international community

Support the efforts of the Republic of Moldova in reforming its criminal law system, in particular, the measures to strengthen the national preventive mechanisms in compliance with international standards; Extend financial support to the modernisation of the prison system and technical cooperation, such as training for law enforcement officials;

In view of the transnational dimension of trafficking and the resulting shared responsibility among States, develop bilateral and transnational solutions to the problem.

**Conclusions and recommendations** of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/11/6/Add.4, para.80-90)

80. The Republic of Moldova, since its independence in 1991, has encountered a multitude of difficulties in its transformation to a political democracy and market economy. While many of the related challenges hold commonalities with other post-Soviet countries, this mission has enabled me to identify some of the salient features of the Moldovan transition, which have significant implications for women's status and the violation of their rights.

81. One of the most common gendered outcomes of the post-Soviet transition is the dual burden of economic exclusion and patriarchal transgression in women's lives. In the Republic of Moldova, while violence within the private sphere has been found to be the most prevalent form of abuse confronting

women, the risk of torture and ill-treatment is particularly manifest in the context of irregular migration which often intersects with trafficking for purposes of sexual and labour exploitation. Migration of Moldovan women, which is initially motivated by economic pressures, is strongly linked to violence and ill-treatment within private life.

82. While trafficking has gained greater recognition in society and by authorities as a public policy issue, domestic violence still remains largely invisible and legitimated as a normal aspect of primary relations. The link between the two is rarely questioned. Consequently, despite the commendable legal and policy developments, particularly in the fields of gender equality, domestic violence, trafficking and migration, the discrepancy between the normative framework and the reality on the ground is a major concern.

83. Furthermore, the predominant approach to crimes against women is a punitive one rather than preventive, protective and corrective. Reporting of such crimes continues to be low and their investigation, prosecution and conviction are poor. Given that crimes against women are largely hidden or socially condoned, combating the problem is challenging, as it is both difficult and costly, and has minimal political returns in the short term. However, the Government is obligated under international and domestic law to embrace this challenge with strong political will and determination. This requires first and foremost: a recognition of the link between women's status and the diverse forms of violence against them; fundamental shifts in mentality and effective policies and programmes, including vigorous public awareness campaigns, training programmes for law enforcement and judicial staff, as well as health professionals; promoting and supporting women's empowerment; and partnership with civil society in building a strong and reliable infrastructure for the protection of victims of violence.

84. While the Government of the Republic of Moldova is primarily responsible in ensuring that women living under its jurisdiction live a life free of violence, it is important to emphasize that combating trafficking in women and girls is also the joint responsibility of the international community, requiring transnational solutions and cooperation.

85. In light of the above, I would like to make the following recommendations to the Government, which are also applicable to the Transnistrian region of the Republic of Moldova. They will require the support and assistance of donor agencies in their implementation.

86. Regarding the elimination of violence against women and girls, the Special Rapporteur recommends that the Government:

- (a) Elaborate a Plan of Action for the implementation and monitoring of the Law on preventing and combating violence in the family, including through appropriate mechanisms and the allocation of adequate budgetary and human resources for its implementation to relevant State bodies;
- (b) Ensure adequate funding to improve the existing infrastructure, including long-term rehabilitation programmes, to support victims of domestic violence and trafficking and create new centres that provide psychosocial, legal and residential services throughout the country, paying special attention to the increased vulnerability of women and girls in rural areas;
- (c) Expand the framework of the National Referral System for the Protection of Victims of Trafficking and Persons at Risk to children left behind and victims of domestic violence; and bearing in mind the intimate link between trafficking in women and domestic violence, institute a comprehensive, coordinated Government-led system for protection and assistance to all victims;
- (d) Enact internal regulations and protocols defining the roles, responsibilities, procedures and codes of conduct of each relevant sector; develop reporting and monitoring mechanisms and provide skills training for the efficient performance of all these functions;
- (e) Establish specialized female law enforcement units;
- (f) Develop training modules on the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Declaration on the Elimination of Violence against Women and relevant national legislation on violence within the family, gender equality and trafficking for training of all law enforcement personnel, judges and prosecutors, health-care providers and social workers to ensure that they adequately respond to cases of violence against women;

(g) Address the root causes of domestic violence and trafficking of women and girls, and their inter-linkages in all policies, plans and programmes;

(h) Ensure that all those who are involved in the trafficking and sexual exploitation of women and girls are duly prosecuted and punished to the full extent of the law, while guaranteeing the victims' right to protection and confidentiality;

(i) Promptly and thoroughly investigate all allegations which may constitute forms of violence against women;

(j) Consider legislative reforms recognizing the effects and trauma of domestic violence on women, with a view to ensuring that this is taken into account as mitigating circumstances, in the case of women who murder or inflict severe bodily injuries on their husbands/partners because of domestic violence.

87. Regarding gender equality and empowerment of women, the Special Rapporteur recommends that the Government:

(a) Institute a mechanism located within the highest level of Government - a national rapporteur or observatory on gender issues - to observe and monitor trends in gender equality and ensure the consistency of progress achieved;

(b) Ensure full implementation and monitoring of the Law on equal opportunities for women and men, including through the allocation of adequate financial resources, and the guarantee of legal remedies in case of violations;

(c) Ensure that all job-generation and poverty-alleviation strategies and programmes are gender sensitive, and that women, particularly those from rural areas, have full access to vocational training programmes, including through the implementation of temporary special measures in accordance with article 4 of the Convention on the Elimination of All Forms of Discrimination against Women and General Recommendation No. 25 (2004) of the Committee on the Elimination of Discrimination against Women;

(d) Conduct awareness-raising campaigns on violence against women and women's rights targeted at women, particularly in rural areas, to enhance their awareness of their human rights and to ensure that they can avail themselves of procedures and remedies for violation of their rights;

(e) Integrate a gender equality perspective into school textbooks and curricula and provide gender training for teachers, with a view to changing patriarchal attitudes and stereotypes regarding the role of men and women in the family and society;

(f) Consider reintroducing the "life skills education" programme into elementary and secondary school curricula;

(g) Encourage the media to play a more active role in promoting women's status in society, and not to project gender stereotypes or discriminatory attitudes towards women.

88. Regarding gender-sensitive information and knowledge base, the Special Rapporteur recommends that the Government:

(a) Enhance national level collection, analysis and dissemination of sex-disaggregated data on the prevalence of different forms of violence against women and girls, including through the classification of domestic violence as a separate crime in police and prosecution records, and introduce specific modules on violence against women and trafficking in national surveys;

(b) Set up a centralized database to map out the support services and institutions for women and girls subjected to violence within the National Referral System;

(c) Collaborate with academic and research institutions to carry out periodic research on the impact of economic restructuring on women, migratory trends and their affect on the family;

(d) Strengthen exchange of data between government bodies, crisis centres and international and non-governmental organizations.

89. Regarding institutional and public sector reforms, the Special Rapporteur recommends that the Government:

(a) Consider restructuring the national machinery for the advancement of women as an independent entity located at the highest level of the government structure and strengthen it with the financial and human capacity and political authority to enable outreach and to coordinate the work of all ministries and relevant public institutions on gender equality issues;

- (b) Monitor, through measurable gendered indicators, the impact of laws, policies and action plans in order to evaluate progress achieved towards the elimination of violence against women and girls;
- (c) Investigate with diligence all allegations of corruption among public servants and prosecute perpetrators.

90. With regards to international cooperation, 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;
- (b) Adopt decisive measures to regulate migratory flows, including by promoting safe migration on the basis of the new Law on labour migration, the Mobility Partnership with the European Union and bilateral agreements, including measures related to data collection and recording of migrants leaving the Republic of Moldova, information-sharing and training, and addressing the gendered social consequences of migration and supporting women migrants;
- (c) Promote labour force mobility opportunities, as an expression of the right to free movement and the right to dignified working conditions;
- (d) Foster international, regional and bilateral cooperation, under the principle of shared responsibility of States, with countries of transit and destination, to effectively respond to incidents of trafficking with the view to provide safe return and reintegration to victims, and to apprehend and punish traffickers;
- (e) Work with the donor community to encourage them to include the issue of domestic violence in their trafficking programmes.

## Myanmar

### Introduction

During the period the Special Rapporteur on the situation of human rights in Myanmar has travelled twice to Myanmar and has established constructive working relations with its Government (please refer to document A/HRC/10/19). The present report, submitted pursuant to Human Rights Council resolution 8/14, mainly covers human rights developments in Myanmar since the Special Rapporteur's interim report submitted to the General Assembly (A/63/341).

### Conclusions and recommendations (A/HRC/10/19, para.85 -99)

85. In less than one year, the new Special Rapporteur has already travelled twice to Myanmar. A very small number of prisoners of conscience were released during that period, which the Special Rapporteur hopes is the beginning of the progressive release of more than 2,100 others. The Special Rapporteur engaged in constructive dialogue with the authorities in Myanmar with a view to achieving the minimum requirements to ensure that the elections in 2010 and its aftermath will comply with the international standards of a democratic society and the expectations of the international community.

86. The situation of human rights in Myanmar remains challenging. In his report to the General Assembly (A/63/341), the Special Rapporteur recommended four core human rights elements to be completed before the elections in 2010. Until they are completely implemented, the Special Rapporteur will continue to recommend their full implementation. In the meantime, he will follow closely the Government's implementation process for each core element, and will constantly check with the Government for updates on the progress of the implementation process. He stands ready to provide any assistance and expertise in this process. He also calls on the donor community to provide any assistance required to build a society based on respect for fundamental human rights and democratic institutions for the people of Myanmar.

### V. RECOMMENDATIONS

87. In his report submitted to the General Assembly (A/63/341), the Special Rapporteur recommended that the Government implement the four core human rights elements before the elections in 2010. During his mission to Myanmar in February 2009, the Government expressed its readiness to implement the four core elements, but their effective implementation and completion has yet to be seen. Therefore, the four core human rights elements are again included as recommendations, taking into account the developments witnessed during the mission.

88. The Special Rapporteur recommends that the Government of Myanmar:

- (a) Sign and ratify the remaining core international human rights instruments;
- (b) Expand the mandate of the Tripartite Core Group to include all other regions in Myanmar in need of humanitarian aid;
- (c) Complete the four core human rights elements indicated below before the elections in 2010.

(i) First core human rights element: review of national legislation in accordance with the new Constitution and international obligations

89. The Special Rapporteur has recommended that the Government of Myanmar start reviewing and amending domestic laws that limit fundamental rights and contravene the new Constitution and international human rights standards. Myanmar, as a State Member of the United Nations that signed the Charter of the United Nations soon after the country gained independence in 1948, must honour its international human rights obligations, and cannot invoke provisions of its domestic law as justification for its failure to comply with them (article 27 of the Vienna Convention).

90. Any domestic law that limits the enjoyment of human rights should (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation that does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulae would contravene the principle of legality and international human rights law.

91. In his report submitted to the General Assembly (A/63/341), the Special Rapporteur identified a number of legal provisions that do not fulfil the above-mentioned requirements, and recommended that the Government start a process of review and, at the same time, stop arrests and convictions under those legal provisions, namely, the State Protection Act (1975); the Emergency Provision Act (1950); the Printers and Publishers Act (1962); the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions (No. 5) (1996); the Law Relating to the Forming of Organizations (1988); the Television and Video Law (1985); the Motion Pictures Law (1996); the Computer Science and Development Law (1996); the Unlawful Association Law; the Electronic Communication Law; and sections 143, 145, 152, 505, 505 (b) and 295 (A) of the Penal Code.

92. During the Special Rapporteur's mission to Myanmar in February 2009, the Attorney General informed him that 380 domestic laws had been sent to the concerned ministries for review, to check compliance with international human rights standards and the provisions of the new Constitution. In the meantime, many people are still detained in Myanmar and many harsh sentences against prisoners of conscience have been issued under the above mentioned domestic laws. The Special Rapporteur urges the Government to give priority to the legal provisions listed above (see paragraph 91) when reviewing the 380 domestic laws to check compliance with the human rights provisions of the Constitution.

(ii) Second core human rights element: progressive release of prisoners of conscience

93. At present, there are more than 2,100 prisoners of conscience detained in different prisons around Myanmar. A prisoner of conscience is a person who (a) is charged with or has been convicted for the infringement of national legislation, which impedes enjoyment of freedom of expression, opinion, peaceful assembly, association or any other human right; and (b) does not have access to a court, or is being tried by courts that lack independence and impartiality, and/or due process of law is denied. These two circumstances are against the basic human rights recognized in the new Constitution and the Universal Declaration of Human Rights. Therefore, prisoners of conscience are basically individuals whose human rights are systematically denied.

94. Given the fact that fundamental rights such as liberty and personal integrity are being affected in detention, the release of prisoners of conscience, even progressive, should start as soon as possible. Release must be without any conditions that may result in new ways of diminishing the enjoyment of human rights, such as written statements renouncing the right to political participation or campaign. On the other hand, parallel to release, immediate measures should be taken to avoid any cruel treatment, improve conditions of detention and ensure urgent medical treatment.

95. In his report (A/63/341), the Special Rapporteur recommended that the prisoners be released in the following order of priority:

- (a) Elderly prisoners;
- (b) Prisoners with health problems;
- (c) Prominent members of political organizations and ethnic leaders;
- (d) Long-standing prisoners;
- (e) Members of religious orders;
- (f) Women who have children;
- (g) Prisoners transferred to forced labour camps;
- (h) Unconvicted prisoners;
- (i) Prisoners without a criminal record;



(j) Prisoners held in jails remote from their homes.

96. In September 2008, the Government released 9,000 prisoners, although only 7 were prisoners of conscience, of whom one was rearrested a day later. In February 2009, the Government released 6,313 prisoners, but only 29 were prisoners of conscience. These releases, although encouraging, lack any proportionality with the total number of prisoners of conscience. Therefore, these measures cannot be seen as progressive.

(iii) Third core human rights element: armed forces

97. In his report (A/63/341), the Special Rapporteur recommended that a number of measures be adopted by the military and the police in order to improve the human rights situation in the country. These recommendations relate to very serious issues that should be stressed again. In this regard, the military should:

(a) Repeal discriminatory legislation and avoid discriminatory practices, particularly in Northern Rakhine State, where a large part of the Muslim community has been deprived of citizenship, movement and other fundamental rights for many years;

(b) Refrain from the recruitment of child soldiers, and continue its policy to avoid such a practice;

(c) Forbid the use of anti-personnel landmines. In this respect, the Special Rapporteur recommends again that the Government ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction. The Government has reportedly justified its failure to ratify the Convention by stating that rebels still use anti-personnel landmines. However, violations of international humanitarian law by one party to a conflict are no justification for non-compliance by other parties;

(d) Respect international human rights and humanitarian law in areas affected by armed conflict, particularly in Kayin State. It is prohibited to direct attacks against civilians not directly participating in the hostilities or to launch indiscriminate attacks against military objectives and civilians or civilian objects. Every precaution must be taken to spare civilians and their property of the effects of the hostilities. Medical and humanitarian staff, hospitals and clinics must be respected. This includes ensuring efficient working of health providers in the conflict areas;

(e) Refrain from the use of forced labour of civilians (portering), particularly in Kayin State. In this regard, the Special Rapporteur recommends that the Government engage with ILO representatives to ensure compliance of prison labour policy with the obligations of the Convention concerning Forced or Compulsory Labour (Convention No. 29);

(f) Refrain from detaining individuals for alleged infringement of national laws that are under review according to the first core human rights element, and refrain from ill-treatment of detainees;

(g) Establish a permanent and meaningful training programme on human rights for members of the armed forces, police and prison forces, with international cooperation. In this regard, the Special Rapporteur recommends that technical assistance be requested from OHCHR.

(iv) Fourth core human rights element: the judiciary

98. In his report submitted to the General Assembly (A/63/341), the Special Rapporteur stressed the lack of independency and impartiality of the judiciary in Myanmar, and recommended that a series of measures be taken. Subsequently, the judiciary delivered hundreds of harsh sentences against prisoners of conscience, applying national legislation that might be contradictory to human rights standards, with disregard for judicial guarantees.

99. Independency and impartiality of the judiciary remains an outstanding issue in Myanmar. Members of the Supreme Court are appointed by the Head of State, due process of law is not fully respected, and the right to appeal, if granted, is handled by judges with similar constraints and lack of independence. Consequently, the Special Rapporteur reiterates his recommendations that the judiciary:

- (a) Exercise full independence and impartiality, particularly in cases of prisoners of conscience;
- (b) Guarantee due process of law, including public hearings, in trials against prisoners of conscience;
- (c) Refrain from charging and convicting individuals for alleged infringement of national laws that are under review, in compliance with the first core human rights element. The Special Rapporteur urges the judiciary to refrain from conducting trials against prisoners of conscience, if independency is not assured, due process of law is not guaranteed and national law is not properly reviewed;
- (d) Establish effective judicial mechanisms to investigate human rights abuses in order to fight impunity;
- (e) Seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles. In this respect, the Chief Justice accepted the recommendation to engage with the Special Rapporteur on the independence of judges and lawyers, a decision that was welcomed.

## Netherlands

### Introduction

During the period under review, the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights visited The Netherlands from 26 to 28 November 2008. The visit is linked to the visit of the mandate holder to Côte d'Ivoire from 4 to 8 August 2008 following which a consolidated report was issued (please refer to document A/HRC/12/26/Add.2).

### Conclusions and recommendations (A/HRC/12/26/Add.2, para.85 pertains to Netherlands only.)

85. The Special Rapporteur recommends that the Government of the Netherlands and relevant State actors:
- (a) Harmonize and strengthen existing legislation on the prevention of marine pollution and environmental management in order to ensure more rigorous inspection and, where necessary, the detention of ships for a reasonable period of time, in particular in cases of inconsistent or incorrect declarations regarding cargo and waste on board;
  - (b) Consider the creation of a financial mechanism that would ensure the proper discharge and treatment of toxic and hazardous waste in the Netherlands; such a mechanism would need to be developed in accordance with the “polluter pays” principle and presuppose reimbursement by the carrier of the waste upon a judicial determination of liability;
  - (c) Continue to provide support to the Government of Côte d'Ivoire to enable the latter to effectively monitor and address possible long-term human health and environmental effects of the incident.

## Nepal

### **Introduction**

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Nepal from 24 November to 6 December 2008 (please refer to document A/HRC/12/34/Add.3).

### **Conclusions and recommendations** (A/HRC/10/8/Add.2, para.77-100)

77. The Special Rapporteur is encouraged by the Government's expressed commitment to advance the rights of indigenous peoples, as reflected in Nepal's ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and its support of the United Nations Declaration on the Rights of Indigenous Peoples, as well as in a number of policy and law reform initiatives in place at the domestic level. Much remains to be done, however, to transform into reality the Government's stated commitment to advancing the rights of indigenous peoples. The Special Rapporteur respectfully submits a number of recommendations in this regard.

#### Legal and institutional reform

78. A comprehensive programme of law and policy reform should be in place to advance, in consultation with indigenous peoples, implementation of Nepal's commitments under Convention 169 and the United Nations Declaration. All relevant Government agencies, legislative officials and Adivasi Janajati representatives should be part of this programme.

An important initial step in this direction is the establishment and work thus far of the Task Force on Implementation of ILO Convention 169.

79. Within the framework of this programme, proposals for legislative reforms should be developed, and the relevant Government ministries and agencies should review their administrative practices, regulations and policies, in order to adopt the measures necessary to ensure conformity with Convention 169 and the Declaration throughout all institutions of State.

80. Related to the foregoing, a comprehensive initiative should be developed to educate and raise awareness among Government officials, legislators, members of the judiciary and other stakeholders on Convention 169 and the United Nations Declaration.

81. The National Human Rights Commission should in its structure ensure the participation of indigenous peoples' representatives and be given an explicit mandate to monitor indigenous peoples' individual and collective rights.

82. The official list of Adivasi Janajati should be open to amendment in order to ensure the inclusion of all such indigenous groups in the relevant consultations and in the programmes aimed at benefiting indigenous peoples.

83. The Government should make efforts beyond those already in place to ensure that birth and citizen certificates are issued for indigenous people, in particular for those residing in the remote areas.

84. National census data should include disaggregated information organized by categories of indigenous ethnicity or nationality, and referenced in relation to gender, taking into account the criterion of self-identification, in order to promote accurate understanding of indigenous peoples' situations and the development of appropriate, gender-sensitive programming.

85. Quota or reservation policies should be strengthened or consolidated to ensure access by members of marginalized indigenous communities to employment in civil service and public institutions.

## Constitution-making process

86. In order to provide the highest safeguards for the collective and individual rights of the Adivasi Janajati, those rights should be explicitly incorporated into the new constitution in accordance with the international standards to which Nepal has committed.

87. In addition to existing means of representation in the Constituent Assembly, special mechanisms should be developed for consultations with the Adivasi Janajati, through their own representative institutions, in relation to proposals for new constitutional provisions that affect them.

## Federalism, local Government, and autonomy

88. Proposals for the design of a new federal structure should advance the self-determination of the Adivasi Janajati, which means advancing their exercise of the right to autonomy or self-government in relation to their own affairs, including the right to maintain their own customary laws and justice systems with due respect for universal human rights; the right to participate in decision-making at all levels of authority in relation to all matters affecting them; rights over territory and natural resources in accordance with customary patterns; and the right to maintain and develop the various aspects of their distinctive cultures. Federalism proposals should be developed with these and related rights in mind, in a spirit of flexibility and accommodation, without focusing on predetermined outcomes for the federal structure.

89. Irrespective of the final makeup of the federal system, specific measures should be devised to ensure that local Government bodies include effective participation by indigenous peoples. This may entail the establishment or strengthening of quota or reservation systems for Adivasi Janajati to be guaranteed representation in local bodies.

## Land, territory and resource rights

90. In accordance with the standards set forth in Convention 169 and the United Nations Declaration:

- (a) Existing initiatives of land tenure reform should incorporate a specific focus on the rights of the Adivasi Janajati over the lands, territories and natural resources they traditionally have inhabited or used, or otherwise possessed, either individually or collectively;
- (b) Legislative and administrative measures should be enacted to ensure these rights, including measures entailing a land demarcation and titling procedure;
- (c) Appropriate measures should be adopted to ensure that Adivasi Janajati communities are consulted, through their own representative institutions, in the planning and undertaking of any development project, either private or public, that affects their traditional land use patterns or access to natural resources;
- (d) A mechanism should be developed to provide redress to Adivasi Janajati communities and their members for their loss of land or access to natural resources incurred without their free, prior and informed consent, including when that loss has occurred by the establishment of protected areas, development projects, concessions for the exploitation of natural resources, or conveyances to private parties. Redress should include, where possible, restoration of indigenous peoples' access to resources, or a return of their land, especially when the loss occurred by irregular conveyances;
- (e) The National Parks and Wildlife Conservation Act should be amended to include enhanced participation of Adivasi Janajati in the management of the parks and guarantee their access to natural resources on which they traditionally have depended for their subsistence, as well as provide them the opportunity to share justly in the financial and other benefits of the parks. Also in this connection, park authorities should ensure due process in the prosecution and punishment of alleged breaches of park regulations, and should penalize any mistreatment or abuses of local individuals committed by park guards.

## Cultural heritage

91. NDFIN should develop a national programme aimed at promoting the conservation and development of the cultural heritage of the Adivasi Janajati, including indigenous languages, traditional medicines and healing practices, religious or spiritual sites and practices, and cultural traditions and festivities, with the involvement of all Government ministries or agencies concerned and with the participation of Adivasi Janajati representatives.

92. Existing plans for bilingual education should be enforced as a matter of priority in order to promote the revitalization and development of Adivasi Janajati languages, including by allocating the required human and financial resources to allow for effective implementation of such programmes.

#### Social and economic development

93. Special programmes and policies should be strengthened and developed in order to promote the social and economic development and access to public services of the Adivasi Janajati, in accordance with their own priorities and cultures, and with their full participation.

94. A plan of urgency should be developed in order to confront the social and economic conditions of Adivasi Janajati communities listed as endangered or highly marginalized indigenous groups, including the former bonded labourers such as the Kamaiyas. With regard to the former bonded labourers in particular, the Government should at a minimum move swiftly to fulfil and strengthen existing commitments to them for their rehabilitation.

#### Women

95. Renewed efforts to promote the rights of indigenous women should be urgently put in place, including measures to improve their representation and to eliminate all forms of discrimination and violence against them, with the active involvement of indigenous women and their organizations.

#### Children

96. The Government should strengthen programmes to ensure the well-being and development of indigenous children in all spheres of life, in a manner conducive to the strengthening of their cultural identities.

97. Measures should be enhanced to eradicate the Kamalari practice of bonded child labour and to rehabilitate children who have been victims of that system.

#### International actors

98. The United Nations Country Team is encouraged to follow up on the implementation of the recommendations included in this report, in full cooperation with the Government agencies concerned, and with the active involvement of the Adivasi Janajati through their representative institutions.

99. International agencies and donors should collaborate with indigenous peoples to design and implement specific programmes that are conducive to implementing the principles of Convention 169 and the United Nations Declaration.

100. The Office of the High Commissioner for Human Rights in Nepal should continue to strengthen its programme of human rights education and promotion for indigenous peoples in partnership with Government agencies and other actors, and engage in targeted research on indigenous human rights issues that could assist in the process of developing the needed legal and policy reforms to implement Convention 169 and the United Nations Declaration. In this connection, OHCHR, in cooperation with the relevant Government agencies, should conduct a study on the situation of the Adivasi Janajati in relation to lands and natural resources, including the situation in national parks and development projects affecting indigenous traditional territories.

## Palestine /OPT

### Introduction

Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the 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, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty (please refer to document A/HRC/10/22).

### Conclusions (please refer to para.99 -105)

99. The recommendations formulated by the mandates whose submissions are included above have been compiled and merged in the section below.

100. The protection of civilians requires immediate action by all parties and the international community.

101. All parties to the conflict should cease all actions violating international human rights and humanitarian law. In particular, the occupying Power should:

- (a) End the blockade on Gaza negatively affecting civilians;
- (b) Allow unimpeded and safe passage and access to Gaza of humanitarian assistance, including food aid;
- (c) Allow the unrestricted imports of medical supplies, foodstuffs and agricultural inputs, fuel and construction materials;
- (d) Grant prompt permission for patients with medical referrals for treatment outside Gaza, especially for expectant and nursing mothers;
- (e) Ensure the free and unimpeded movement of civilians between Gaza and other parts of the Occupied Palestinian Territory.

102. All parties should establish accountability mechanisms providing for law-based, independent, impartial, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law in accordance with their respective obligations. Such investigations must hold perpetrators to account and provide redress to victims where violations are found to have occurred. Investigations should address, inter alia, the following issues:

- (a) Violations of the principles of distinction, proportionality and precaution: a significant number of incidents have occurred where the circumstances and the large number of civilians killed in a single attack raise prima facie concerns that the attacks were carried out without respect for these principles;
- (b) Targeting of Palestinian civilian police and members of the Hamas political wing: Israel is accused of having intentionally targeted civilians and civilian objects considered connected to Hamas, but not taking direct part in hostilities;
- (c) Use of human shields and placing civilians at risk: there are credible reports of both Israel and Hamas co-locating military targets near civilians and civilian objects. There are specific reports that Hamas fired rockets and conducted other military offensives from residential areas, and that Israeli soldiers took sniper positions from within Palestinian homes, endangering the lives of residents;
- (d) Extrajudicial executions by Hamas of Palestinian civilians;
- (e) Unlawful use of incendiary weapons (white phosphorous artillery shells): the use of white phosphorous during a military offensive may be permissible where it is intended to provide cover for troop movements. There are, however, reports that Israel used such weapons in densely populated civilian areas, with severe consequences for residents. Unlawful use of artillery shells (155 mm): there is reliable evidence that artillery shells, which can have a casualty radius of up to 300 metres, were also used in densely populated civilian areas. Unlawful use of flechettes (4 cm darts): Israel is reported to have used 120 mm shells packed with flechettes in populated residential areas;
- (f) Attacks on medical personnel and ambulances as well as hospitals and denial of medical

treatment and access to treatment offered by ICRC and the Palestinian Red Crescent Society;

- (g) Attacks on schools;
- (h) Destruction of vital civilian infrastructure;
- (i) Interference with the provision of humanitarian aid.

103. All parties must implement their obligations to respect, protect and fulfil human rights, including, where necessary, by taking any measures needed to:

- (a) Ensure the protection of medical workers and facilities and facilitate rehabilitation for seriously wounded patients, as well as psychosocial health support and treatment, especially for children and youth;
- (b) Enable the immediate resumption of regular educational activities, make schools zones of peace and ensure that schools are protected from military attacks and from seizure or use as centres for recruitment;
- (c) Promote education as a means to reduce psychosocial stress and build the conditions for lasting peace;
- (d) Facilitate the prompt repair of greenhouses, farms and centres of food production;
- (e) Enable the repair of water and pumping stations;
- (f) Enable the import of reconstruction materials needed to build or repair vital infrastructure and housing, and facilitate the full reintegration in dignity and security of the recently displaced (without prejudice to the right of return of Palestinian refugees);
- (g) Ensure access to liquidity and financial and other resources needed so that people may resume normal livelihoods;
- (h) Take carefully into account the needs of particular groups, including children, women, persons with disabilities, refugees and those displaced by the recent violence.

104. United Nations entities should continue to assess the needs of the Palestinian people with a view to contributing to the wide-scale reconstruction efforts of the international community in the Occupied Palestinian Territory, including by continuing its damage assessment by compiling satellite imagery and other detailed data on destruction in Gaza.

105. The international community should actively promote the implementation of the decisions, resolutions and recommendations of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures. In this respect, the mandate-holders recall the obligation of States to cooperate to bring to an end through lawful means any serious breach of an obligation arising from a peremptory norm of general international law. They also recall the obligation of all States to ensure respect for the provisions of international humanitarian law.



## Panama

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Panama from 27 to 30 January 2009 (please refer to document A/HRC/12/34/Add.5). The full report is available in Spanish only.

### Conclusions (A/HRC/12/34/Add.5, para.60-64)

60. El proyecto hidroeléctrico Chan 75 implica la construcción de una represa que resultaría en la inundación de las tierras usadas y ocupadas por la comunidad Charco la Pava y otras tres comunidades indígenas. La empresa a cargo del proyecto, AES Changuinola, ha avanzado en las obras de construcción y el proceso de reasentamiento de las cuatro comunidades en el área a ser inundada de acuerdo a lo acordado con el Estado. Ninguna de estas comunidades fueron consultadas adecuadamente y con carácter previo a la decisión de aprobar el proyecto por parte del Estado, ni tuvieron la oportunidad de otorgar su consentimiento en relación con su reasentamiento.

61. Una vez que el Estado adoptara la decisión de reasentar estas comunidades, la empresa iniciaría negociaciones directamente con miembros de las comunidades para llegar a acuerdos acerca de las condiciones de su reubicación, incluyendo indemnizaciones y medidas de mitigación, alcanzando acuerdos individuales en muchos casos. Sin embargo, existen indicios de deficiencias en estos procesos de negociación, debido al desequilibrio de poder y a la falta de reconocimiento o entendimiento adecuados de las particularidades culturales de las comunidades afectadas. Además, no se les ha garantizado a las comunidades una participación en los beneficios a ser derivados por el proyecto hidroeléctrico.

62. La falta de su seguridad sobre la tenencia de tierra y recursos naturales contribuye a la situación de vulnerabilidad de las comunidades afectadas por el proyecto. Existen indicios de la existencia de patrones de uso y ocupación tradicional de la tierra que generan en las comunidades derechos de propiedad sobre los lugares donde actualmente se encuentran asentadas y en las áreas circundantes. Sin embargo, el Estado no ha reconocido o garantizado estos derechos, y el proyecto aparentemente fue concebido y ha avanzado sin considerar la posibilidad de que estos pudieran existir.

63. Existen muestras de descontento con aspectos específicos del proyecto hidroeléctrico entre los afectados. Un número significativo de miembros de la comunidad Charco la Pava, en particular, han expresado su oposición al proyecto en una manifestación que resultó en un enfrentamiento con la policía en que fueron detenidas al menos 35 personas, incluyendo mujeres y niños de la comunidad. La investigación llevada a cabo por el Ministerio de Gobierno y Justicia no identificó un comportamiento indebido por parte de la Policía Nacional, tal y como fue alegado en su momento, pero los hechos parecen indicar que la respuesta policial a los manifestantes pudo haber sido mejor orientada, con miras a evitar la elevación de la tensión ya existente. Asimismo, el hecho de que la presencia policial en la zona se base en una relación contractual con la empresa puede resultar problemático.

64. El Estado es responsable de asegurar el respeto y la protección de los derechos humanos de las comunidades afectadas por el proyecto, y esta responsabilidad se extiende a las actuaciones de la empresa. Independientemente de la responsabilidad del Estado, existe la expectativa de que la empresa conduzca sus actividades de conformidad con las normas internacionales de derechos humanos pertinentes, y que no contribuya indirectamente a la vulneración de dichas normas. La empresa muestra buenas intenciones en relación con el respeto a los derechos humanos, y de hecho ha tomado iniciativas importantes al respecto en el presente caso. No obstante, sería necesario que la empresa ampliara su conocimiento de las normas internacionales de derechos humanos aplicables, incluyendo aquellas que protegen específicamente a los pueblos indígenas.

**Recommendations** (A/HRC/12/34/Add.5, para.65-73)

65. El Relator Especial destaca la necesidad de que el Estado de Panamá incorpore dentro de sus leyes un procedimiento de consulta con los pueblos indígenas que sea compatible con las normas internacionales pertinentes. Este procedimiento debería ser elaborado con la participación de los pueblos indígenas del país, y debería guiar al Estado en el desarrollo de futuros proyectos que afectan a los pueblos indígenas.

66. Asimismo, el Relator Especial recomienda que las empresas panameñas o aquellas que lleven a cabo sus actividades en el país, incluyendo AES Changuinola, desarrollen códigos de conducta, que sean conformes con las normas internacionales pertinentes, que guíen su actuación en relación con la planificación e implementación de proyectos que afectan a pueblos indígenas.

67. Con respeto a la situación específica de la comunidad Charco la Pava y las otras comunidades afectadas por el proyecto hidroeléctrico Chan 75, el Relator Especial estima, con base en las reflexiones anteriores, que es necesaria una reevaluación del proyecto y la puesta en práctica de medidas correctivas, incluyendo el inicio de un nuevo proceso de diálogo y una serie de medidas preliminares en relación con el estado actual de la situación.

## Un nuevo proceso de diálogo

68. El Relator Especial recomienda abrir un nuevo proceso de diálogo entre las comunidades afectadas por el proyecto, el Estado y la empresa AES Changuinola. El objetivo del diálogo debería ser llegar a un consenso acerca de las condiciones por las cuales el proyecto podría seguir adelante, en condiciones de respeto al derecho a la consulta y al consentimiento de los pueblos indígenas tal y como se reconocen en la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas y en otros instrumentos internacionales relevantes.

69. En la búsqueda de este consenso, debería tenerse en cuenta un amplio abanico de posibilidades y arreglos flexibles, tomando en cuenta los derechos de los pueblos indígenas de decidir sus propias prioridades de desarrollo; de mantener control sobre sus territorios tradicionales; de beneficiarse del aprovechamiento de los recursos naturales dentro de estos territorios, incluyendo los recursos hídricos; y otros derechos pertinentes. Al mismo tiempo, habría que tomar también en cuenta las inversiones que ya han sido llevadas a cabo por la empresa de buena fe, así como el interés público en el proyecto.

70. El proceso de diálogo debería respetar las siguientes condiciones mínimas:
- a) El Estado debería evaluar comprensivamente los hechos relativos a los patrones de uso y ocupación de tierras y recursos naturales de las comunidades indígenas en el área del proyecto, de acuerdo a las normas internacionales pertinentes, y reconocer los derechos de propiedad que puedan corresponder a estas comunidades con base en estos hechos y normas.
  - b) Debería asegurarse que la participación efectiva de las comunidades indígenas se ajuste a sus propias costumbres en relación con la representatividad y con las formas de organización relativas a la toma de decisiones.
  - c) En todas las fases del diálogo, debería asegurarse el acceso a la información completa sobre el proyecto y sus impactos, así como sobre las distintas opciones disponibles. A este respecto, el Estado debería asegurar que se lleve a cabo un estudio adecuado sobre el impacto ambiental y social del proyecto, que tome en cuenta plenamente los derechos de las comunidades, sus usos de la tierra y recursos naturales, así como sus características culturales propias, dando amplia oportunidad a las comunidades afectadas para conocerlo y debatirlo públicamente. Asimismo, el Estado debería proporcionar a las comunidades afectadas información sobre sus derechos en relación con el desarrollo del proyecto desde el inicio.
  - d) El Estado debería hacer todo lo posible para equilibrar las posiciones y el poder de negociación entre las partes. A estos efectos, el Relator Especial recomienda que se designe a un mediador confiable e independiente, elegido con el consentimiento de todas las partes, y que se proporcione a la parte indígena los medios económicos o técnicos que necesite para prepararse y participar efectivamente en el diálogo.

- e) Si se confirma la decisión de reasentar las comunidades, se deberían definir las condiciones de ese reasentamiento dentro del nuevo marco de diálogo, tomando en cuenta los derechos a la tierra y recursos naturales que pertenezcan a las comunidades en virtud de su tenencia tradicional de la tierra, para así llegar a una indemnización justa que incluya la dotación de tierras de igual o mayor valor y extensión a las anteriores.
- f) Asimismo, si se decide proseguir con el proyecto hidroeléctrico, se debería garantizar que las comunidades indígenas participen de forma equitativa en los beneficios del proyecto, incluyendo los beneficios económicos.

#### Medidas preliminares

71. El Estado debe implementar todas las medidas pertinentes para salvaguardar la seguridad física de los miembros de las comunidades aledañas a las obras de construcción del proyecto hidroeléctrico Chan 75, y para proteger la integridad cultural y bienestar social y económico de estas comunidades.

72. Se debe revisar la presencia policial para asegurar que exista sólo en la medida en que sea necesaria y proporcional para mantener la seguridad física de los miembros de las comunidades; y en relación con lo anterior, que el contrato entre la Policía Nacional y la empresa AES Changuinola no sea prorrogado.

73. Con la finalidad de crear un clima propicio para que se lleve a cabo un nuevo proceso de diálogo entre las partes, el Relator Especial recomienda que el Estado evalúe la posibilidad de suspender las obras de construcción de la represa y el proceso de reasentamiento de las comunidades por un período razonable, hasta que se establezcan las condiciones mínimas para el reinicio de la construcción y el reasentamiento, a la luz de los resultados del nuevo proceso de diálogo. El Relator Especial comprende que la suspensión de las obras de construcción puede implicar una pérdida significativa de recursos económicos. Sin embargo, dicha suspensión ayudaría a establecer las condiciones para el inicio de un diálogo de buena fe dentro del marco planteado en estas recomendaciones.

## Peru

### **Introduction**

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Peru from 17 to 19 June 2009 (please refer to document A/HRC/12/34/Add.8).

### **Conclusions and recommendations** (A/HRC/12/34/Add.8, para.32-57)

32. On concluding his visit to Peru on 19 June 2009, the Special Rapporteur shared with Government representatives and the general public the following recommendations, which he would like to repeat in this report:

A. An independent commission to carry out an exhaustive, objective and impartial investigation

33. The Special Rapporteur recommends that a special, independent commission should be set up to clarify the events of 5 June 2009 and the following days, composed of various institutions that enjoy the confidence of all the parties involved and including indigenous representatives. He also recommends that representatives of the international community should participate in the work of this special commission.

34. The Special Rapporteur recognizes the decisive steps taken by the Government in the interests of resolving the basic problems of the indigenous peoples of Peru by adopting the path of dialogue and repealing Legislative Decree Nos. 1090 and 1064. He notes, however, that there remain challenges to face with regard to clarifying the circumstances that led up to the tragic events in Bagua on 5 June 2009 and seeking ways to find a peaceful solution to the underlying problems.

35. It should be stressed that the proposed special commission should, without prejudice to any investigation that should be carried out by institutions of the administration of justice, determine, in an objective, exhaustive and impartial manner, where civil, administrative and criminal responsibility lies. The Special Rapporteur accordingly urges the various bodies that administer justice to conduct their work in line with international standards on the administration of justice in a State governed by the rule of law, especially the guarantees of independence, promptness and impartiality.

36. In this connection, it is important that all the parties should be clear as to what charges have been brought, the locations in which the persons concerned are held and the jurisdiction under which the trials are held. The Special Rapporteur also emphasizes how important it is that the accused should fully enjoy all the guarantees of due process, especially the guarantees of appropriate and effective legal defence, and that they should be provided with adequate conditions of detention.

B. Review of charges against indigenous leaders

37. In order to generate trust between the parties in the interests of advancing the process of dialogue, the Special Rapporteur recommends that the competent authorities should review the legal charges and judicial proceedings against indigenous leaders and authorities, whose participation in the dialogue is indispensable.

C. Appropriate consultation

38. The Special Rapporteur recommends that the existing dialogue process should be intensified. He emphasizes the need for the State of Peru to implement effectively an appropriate consultation procedure with the indigenous peoples that will be compatible with the relevant international standards, including ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. This process should be set in motion with the participation of the country's indigenous peoples and should guide the State in the development of future projects affecting the indigenous peoples.

39. All the relevant parties should be represented in the process of dialogue, particularly the indigenous peoples, through representatives freely elected by them. Favourable conditions should be created for a consensus on objectives, procedures and timetables and on a mechanism for the practical implementation of agreements reached and the resolution of any questions that may arise during the process.

40. The substantive aspects of the dialogue should include the other legislative decrees that have been a cause of concern to the indigenous peoples and that could affect them, as well as other basic issues that the indigenous peoples have raised to date in various forums, including those relating to their rights to lands and territories and projects for the exploitation of natural resources.

41. The proceedings, and any agreements that are reached, must be compatible with international standards on the rights of indigenous peoples, including those contained in the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which has been ratified by Peru. In this connection, the Special Rapporteur recommends that the Government should apply for technical assistance from ILO and other international organizations.

V. Additional comments in the light of events subsequent to the visit of the Special Rapporteur:

42. The Special Rapporteur cannot end this report without taking note of some important events that occurred during the weeks following his visit. In particular, the Special Rapporteur recognizes the importance of the agreement of 22 June 2009 on the establishment of the National Coordinating Group for the Development of the Amazonian Peoples, comprising 4 representatives of the Executive; the Presidents of the Regional Governments of Loreto, Ucayali, Amazonas, San Martín and Madre de Dios; and 10 representatives of the indigenous Amazonian communities, including representatives of AIDSESEP.<sup>33</sup> The National Coordinating Group has adopted important measures that are in line with the Special Rapporteur's recommendations, including the proposal to set up four working groups to investigate the events in Bagua on 5 June, analyse the legislative decrees of concern to the indigenous communities and propose new legislation, develop a consultation mechanism and propose a plan of Amazonian development that would include consideration of indigenous lands and territories.<sup>34</sup>

43. In that regard, the Special Rapporteur urges the Government of Peru and other interested parties to step up action on clarifying the events in Bagua by setting up an independent commission, as recommended in paragraphs 33 to 36 above. The Special Rapporteur reiterates the importance of engaging the participation both of indigenous peoples and of international representatives in this process and calls on the State and the relevant international organizations to seek to establish and consolidate a mechanism for technical assistance and international monitoring of the process. The Special Rapporteur will continue to monitor progress in the investigation process.

44. The Special Rapporteur notes that Congress has prepared a bill on the regularization of the consultation process.<sup>35</sup> He considers that the bill which should be in conformity with the relevant

<sup>33</sup> Supreme Resolution No. 117-2009-PCM (10 June 2009).

<sup>34</sup> Agreement on the National Coordinating Group for the Development of the Amazonian Peoples (22 June 2009). The proposed working groups would address: (a) the design and composition of a commission to investigate the events in Bagua on 5 June 2009 and put forward ideas for national reconciliation to the Amazonian peoples; it should be made up of respected individuals of moral integrity; (b) discussion and proposals on a solution concerning the decrees of concern to the Amazonian indigenous populations and agreed proposals on new laws to be submitted to the Government, with particular emphasis on the existing Forest and Forest Wildlife Act; (c) prior consultation with the indigenous Amazonian peoples on defining the consultation mechanisms for the application of ILO Convention No. 169, enabling the opinions and points of view of the indigenous Amazonian peoples to be collected (the consultation process should have the support of the regional governments and central Government to facilitate the process); (d) National Proposal for Amazonian Development, on the basis of the progress made by the National Group for Dialogue with the Indigenous Amazonian Communities, established in 2001 and updated in line with current regional and national circumstances.

<sup>35</sup> Draft Acts Nos. 419/2006-CR, 427-2006-CR and 2016/2006.

international standards should be discussed with the indigenous peoples. The Special Rapporteur appreciates the contribution made in this connection by the Office of the Ombudswoman in its report on the indigenous peoples' right to consultation.<sup>36</sup> The Special Rapporteur urges the Government to act in accordance with ILO Convention No. 169 and assume "responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity" (art. 2, para. 1). The Special Rapporteur also recalls that, in accordance with article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, consultations with the indigenous peoples must be held in good faith, through their own representative institutions, in order to obtain their free, prior and informed consent.

45. The Special Rapporteur also recognizes that the Government has adopted measures aimed at reconciliation and the establishment of a climate of trust between the parties, including the repeal of Legislative Decrees Nos. 1090 and 1064 on 19 June 2009 and the lifting of the state of emergency in the Amazonian provinces of Amazonas, Ucayali, Loreto and Cuzco on 23 June 2009.<sup>37</sup> In that connection, the Special Rapporteur calls on all parties to maintain their efforts to achieve reconciliation and mutual understanding and to avoid discrediting, minimizing or dismissing the legitimate concerns of the interested parties. The Special Rapporteur considers that the measures to adopt in the interests of reconciliation should include public expressions of condolence and sympathy to the families of all the victims, both by indigenous peoples and organizations and by the relevant State institutions.

46. With regard to the review of the charges against indigenous leaders as a preliminary measure to establish trust, the Special Rapporteur welcomes the fact that, on 26 June 2009, the judge of Lima Criminal Court No. 27 referred back to the public prosecutor's office the charges against the President of AIDSESEP, Alberto Pizango, and four other AIDSESEP leaders, because it did not specify the offence with which each of them was charged. He is, however, concerned that, according to the information he has received, the police entered the headquarters of the Regional Organization of the Indigenous Peoples of the North of Peru (ORPIAN), which forms part of AIDSESEP, on 23 June, looking for leaders of the organization and arresting one person. The Special Rapporteur also notes with concern that criminal charges seemingly continue to be laid against indigenous leaders for alleged offences relating to their participation in the protests of indigenous peoples, as evidenced by the detention orders for a number of indigenous leaders issued in the week of 6 July. These orders clearly threaten the process of dialogue initiated in accordance with the agreement of 22 June 2009 mentioned above.

47. The Special Rapporteur repeats his recommendation that criminal charges against indigenous persons and leaders should be reviewed and urges the Government to take great care in justifying the criminal charges that it lays in the future, in view of the special circumstances in which the alleged offences occurred and the need to establish proper conditions for dialogue.

48. In that connection, the Special Rapporteur would like to emphasize that, although he recognizes the need to maintain public order and investigate and punish those responsible for offences and/or human rights violations, resorting to the use of the criminal courts should not be the normal approach to dealing with social conflict and protest, unless it is the last available resource (*ultima ratio*) and should be strictly restricted to the principle of "an imperative public interest that is necessary for the functioning of a democratic society".<sup>38</sup> At the same time, the Special Rapporteur reiterates that indigenous persons and peoples should always ensure that their statements and demonstrations always take a peaceful form and respect the human rights of others.

49. Such considerations may be of particular importance in situations involving protests by indigenous peoples, in view of the fact that traditional channels for complaint, through the representative democratic

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<sup>36</sup> Report No. 001-2009, Office of the Ombudswoman, Department of the Environment, Public Services and Indigenous Peoples.

<sup>37</sup> Supreme Decree No. 035-2009-PCM, which supersedes Supreme Decree No. 027-2009-PCM.

<sup>38</sup> See Inter-American Commission on Human Rights, Annual report of the Special Rapporteur for Freedom of Expression 2002, chapter IV, vol. III, Organization of American States (OAS)/Ser.L/V/II. 117, Doc. 5 Rev.1, para. 35.

process, do not always adequately address the concerns of indigenous peoples or take account of their frequent marginalization from the political scene in the country at large.

50. The Special Rapporteur notes generally that the lack of a mechanism for indigenous peoples to claim their legitimate rights to be consulted or to protect their land and territorial rights could contribute to a feeling on the part of the indigenous peoples that they have no adequate means to defend their rights and, as a result, opt for social protest, which, in some cases, may result in actions that are against the law. He also notes that one side effect of the criminalization of protest, in cases where it is not justified, is the creation of a dynamic that could generate a lack of trust between the indigenous peoples and the State authorities, to the detriment of coexistence and democratic legitimacy.

## VI. Concluding observations

51. The Special Rapporteur emphasizes the importance of ensuring that the process of resolving this situation is conducted within the framework of full respect for human rights and fundamental freedoms, in a manner that will contribute to strengthening government by the rule of law and democracy in Peru. The Special Rapporteur recognizes the legitimate aim of the State to promote sustainable development for the benefit of society in general but stresses the need to reconcile that aim with full respect for the rights of indigenous peoples, in accordance with the State's commitments under international law and its own constitutional framework. In addition to ratifying ILO Convention No. 169, Peru played a leading role in drawing up and promoting the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples.

52. In cooperation with the country's indigenous peoples, Peru has an excellent opportunity to establish good practices on the international scale by translating its clear will to comply with its international commitments into the domestic application of the criteria and principles enshrined in international instruments, most particularly with regard to prior and informed consultation with indigenous peoples through their representative institutions on any measure that such peoples consider may affect their rights.

53. The indigenous peoples of Peru, for their part, have an opportunity to show their openness to promoting a dialogue in good faith to facilitate coexistence with other sectors of the country and the establishment of rules that will be helpful in advancing the common good.

54. The Special Rapporteur also notes that a clear strategic engagement is required on permanent mechanisms for dialogue and conflict resolution, which would include, among others, mechanisms relating to territorial rights and other outstanding claims, in the interests of preventing acts of violence and avoiding any repetition of the unfortunate events that occurred in Bagua.

55. The Special Rapporteur offers these observations and recommendations in the hope that they may serve to promote a rapprochement between the parties, mutual understanding and a resolution of the situation. He also confirms his availability to continue working with all parties, within the framework of his mandate to promote full respect and protection for the human rights of indigenous people.

56. The Special Rapporteur reiterates his availability and his interest in making another visit to Peru in order to follow up on his observations and also to consider the general situation of the human rights and fundamental freedoms of the indigenous peoples of Peru, within his mandate from the Human Rights Council.

57. Lastly, the Special Rapporteur respectfully requests that this report should be widely disseminated among the relevant officials of the Government of Peru, the country's indigenous peoples and the general public.

## Philippines

### Introduction

During the period under review, the Special Rapporteur on extrajudicial, summary or arbitrary executions issued a follow-up report that analyses the progress made by the Philippines on implementing recommendations made following his visit to the Philippines from 12-21 February 2007 (A/HRC/8/3/Add.2); (Please refer to document A/HRC/11/2/Add.8).

### Conclusions

43. The Government deserves credit for having enacted some reforms in partial fulfilment of the Special Rapporteur's recommendations, and for having sent a message to the military which resulted in a significant decrease in the number of killings. It has also issued a number of potentially important policy statements affirming its commitment to eliminate such killings. However, in relation to many of the recommendations made, the Government has failed to make sufficient substantive progress and, in some cases, has made no progress at all. Although the number of extrajudicial executions of members of civil society organizations has greatly diminished, too many cases continue to be reported and far too little accountability has been achieved for the perpetrators. In addition, death squad killings, far from being reduced, have skyrocketed. In the face of all the evidence, the Government's denial of the existence of such death squads continues to undermine its credibility and inhibit efforts to address the problem. Overall, the most important shortcoming has been the Government's failure to institutionalize or implement the many necessary reforms that have been identified. In the absence of such steps, the progress that has been made remains fragile and easily reversed.



## Russian Federation

### Introduction

During the period under review, the Special Rapporteur on the independence of judges and lawyers visited Russian Federation from 19 to 29 May 2008 (please refer to document A/HRC/11/41/Add.2).

### Conclusions (A/HRC/11/41/Add.2, para.93-95)

93. The Russian Federation experienced significant changes in recent years which had an important impact on all spheres of life. Important reforms for the justice system have been implemented since 1993, such as the adoption of new legislation, with the new Criminal Procedure Code being a milestone in the attempt to introduce a system where the judge wields the guiding role and where both the prosecutor and the defense lawyer are on equal footing. Significant improvements for the working conditions of judges were the result of the first government reform programme.

94. Important concerns remain about the practical implementation of equal access to the courts and the fact that an important percentage of judicial decisions are not implemented. Another main preoccupation is that there is not sufficient transparency in the selection process of judges as well as in the implementation of disciplinary measures. Political and other interference has damaged the image of the justice system in the eyes of the population. It is also unfortunate that the major achievement of an independent and self-regulatory bar has recently been put at risk and that the actual role of defense lawyers has not yet been fully recognized.

95. Despite the solid, though improvable, legal framework, judges have at times not yet been able to assume their central function in the proceedings. The recent separation of the functions of investigation and prosecution has the potential to further encourage them to take on this central role. All this shows that the new system of independent courts and adversarial proceedings not only requires a legal framework, but also a change in attitude. Recent initiatives, in particular the setting up of a special working group on the judicial reform, in which all main stakeholders appear to be involved, are encouraging signs in this regard. The existing government reform projected for 2007 to 2011, focusing commendably on increased transparency, accessibility and effectiveness of the courts, should be refined and expanded, taking the following recommendations into account.

### Recommendations (A/HRC/11/41/Add.2, para.96-102)

96. In order to assist the Russian Federation in pursuing and renewing efforts in the judicial reform process, the Special Rapporteur recommends that:

97. With respect to the institutional and legal framework:
- As measure of utmost importance, a mechanism for rapid and comprehensive execution of domestic and international judicial decisions is promptly established. In this regard, urgent consideration is given to the recently proposed draft Federal Constitutional Law. Courts' adherence to jurisprudence established at the highest domestic instances is monitored closely. Also, a closer cooperation between bailiffs and courts is institutionalised.
  - The draft law for the establishment of a juvenile justice system, setting a minimum framework for all regions, is adopted without delay.
  - Renewed efforts be undertaken to establish an administrative court system as one of the means to strengthen mechanisms to effectively fight corruption and ensure liability of state officials.
  - With respect to equal access to justice, a federal legal framework on legal aid should be created, providing minimum standards for the regions. A single independent entity is established organising and overseeing the legal aid system as a whole.
  - Regarding criminal legal aid, a separate budget line in the courts' budget is created. Where they do not yet exist, harmonised systems of cooperation between bar chambers and courts

or investigative authorities allowing for objective appointment of legal counsel are set up in all regions. Advocates are paid for all services they provide for free.

- For non-criminal legal aid, regions are encouraged to expand eligibility in terms of categories and income level. The results of the pilot project of state legal bureaus be analysed carefully. On this basis, thorough examination is conducted to determine whether the scheme of state bureaus is apt to ensure the independence of legal advice given.
- As regards military jurisdiction, the Government is invited to share with the Special Rapporteur the details of the currently debated reform steps so as to enable him to offer his advice on the envisaged initiative.
- All competencies enshrined in the Federal Constitutional Law on the Commissioner for Human Rights be translated into the Criminal and Civil Procedural Codes; the respective draft legislation be adopted without delay. Thought be given to expand the individual complaints procedures before the Constitutional Court to all violations of constitutional rights resulting from the unconstitutional implementation of any acts of public authority. This would also contribute to a more effective domestic judicial system.

98. To strengthen procedural legislation and practice:

- The courts' adherence to procedural rights, particularly those affecting the rights to defend, is monitored closely
- Any existing practices and (internal) regulations affecting the rights of detainees be brought in compliance with the guarantees enshrined in the Criminal Procedure Code
- Provisions allowing for pre-charge detention are re-considered so as to allow for effective judicial review
- Appropriate mechanisms for keeping accurate arrest and detention records by the police and an immediate obligation to notify the court about an arrest are introduced
- Explicit time limits on the length of pre-trial detention for grave and particularly grave crimes be stipulated in the legislation
- The right of the defendant to access files kept by the investigative bodies during the investigative state and the right to make copies are enshrined in the law
- Concrete, narrow and exceptional circumstances requiring withholding notification of family members of an arrested person be enumerated in the law
- The practical implementation of the principles of equality of arms and the presumption of innocence be strengthened, including the banning of metal cages from courtrooms
- A legal obligation of the court to order an impartial and effective investigation into credible allegations of torture is created
- Supervisory review is further limited so as to ensure the principle of legal certainty
- Participation of state officials and other persons possibly entering a conflict of interest by serving as a juror in criminal cases be automatically excluded by the law
- The impact of the new Federal Law on the protection of victims, witnesses and other participants in criminal proceedings be carefully analysed and adjustments be made to address possible shortcomings

99. To enhance the independent role of judges:

- Selection of judges be made on merit only, based on a qualification examination, which be at least partly conducted in a written and anonymous manner.
- Following such selection and a three-year probationary period, life appointment be automatically granted unless probationary judges were dismissed as a consequence of disciplinary measures or an independent body declaring, following a specialised procedure, that a certain individual is not capable of fulfilling the role of a judge.
- Selection and appointment procedures as well as tenures are harmonized for judges of federal courts and courts of the federal entities. This should entail life tenures for Justices of the Peace and constitutional (charter) court judges.

- Consideration be given to introduce a system whereby court chairpersons be elected by the judges of their respective courts, as currently done in the Constitutional Court and constitutional (charter) courts.
- A mechanism is established to allocate court cases in an objective manner.
- The law is further elaborated to give guidance on the infractions by judges triggering disciplinary measures. Also, the gravity of the infraction determining the kind of disciplinary measure to be applied is explicitly indicated in the law. Final decisions taken to discipline or remove a judge are subject to independent and objective review.
- The requirement of mandatory continuing professional development for federal judges is translated into federal legislation. An equivalent requirement be also applied to judges of courts of the federal entities.
- Consideration is given to the adoption of preventive security measures for increased protection of judges examining cases of large-scale corruption and organized crime.

100. With respect to the Prosecutor's Office:

- The recently introduced reforms and their impact on the conduct of judicial proceedings and the quality of investigations be analysed on an ongoing basis by an independent entity.
- The still existing general supervisory role of the Prosecutor's Office be gradually transferred to the courts. Also, the right of the Prosecutor-General to participate in parliamentary debates and sessions of executive bodies at any level is reconsidered as it is generally contrary to the principle of separation of powers. Reconsideration is also given to the competency of the prosecutor to sit in non-criminal proceedings as it may create an environment in which judges feel not inclined to act independently.
- Thought be given to transfer the Prosecutor's legal aid function gradually to other bodies, such as the Ombudsman office. At the same time, appropriate remedies are made available which are as accessible and effective.

101. Regarding the maintaining and strengthening of the role of the bar:

- Refrain from adopting the recently proposed amendments to the 2002 Federal Law on Legal Practice and the Bar as they would compromise the principles of self-government and independence of the bar.
- The bar is consulted in any legislative procedures possibly affecting the rights of advocates.
- A uniform scheme for the bar exam, which be at least partly conducted in a written and anonymous manner, be established by the Federal Bar.
- Practical obstacles for lawyers to become judges are removed. There needs to be more permeability between the two professional groups.
- Appropriate conditions are ensured for defense lawyers to exercise their profession without any improper interference.

102. To fight against impunity:

Independent and impartial investigations are conducted into serious human rights violations and effective domestic remedies be made available so as to comply with article 2 paragraph 3 ICCPR  
 Relevant Special Procedures of the Human Rights Council be invited to the country to analyse the situation, including in the Northern Caucasus, and to make appropriate recommendations.

## Saudi Arabia

### Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited Saudi Arabia from 4 to 13 February 2008 (please refer to document A/HRC/11/6/Add.3).

### Conclusions and recommendations (A/HRC/11/6/Add.3, para.92-96)

92. The voices, aspirations and demands of Saudi women are as diverse and multiple as are their life experiences. Among the Saudi women I met, some have expressed contentment and satisfaction with their lives. Others have raised concerns of serious levels of discriminatory practices against women that compromise their rights and dignity as human beings and undermine the true values of their society. And still others shared with me the discrimination and abuse they encountered, with few prospects for redress.

93. This diversity is reflective of the prevailing constraints and opportunities available to women. In past years there have been significant developments in women's status, notably in the area of education. Yet, women's participation in the labour force in both the public and private sectors is lagging, although the latter seems to offer greater prospects for employment and self-actualization in the long term. Women's role in decision-making positions is limited. The guardianship system and a policy of strict sex segregation are major factors preventing a greater participation of women in society and public life.

94. Women's lack of autonomy and economic independence, practices surrounding divorce and child custody, the absence of a law criminalizing violence against women, and inconsistencies in law enforcement and the administration of justice continue to prevent many women from escaping abusive environments. In this regard, the lack of written laws governing private life and discretionary court rulings constitute a major obstacle to women's access to justice. Much remains to be done to ensure that women develop their full capacity, become equal partners in the betterment of their society, and that all women, including domestic migrant workers, enjoy a life free of abuse and discrimination.

95. I would like to address the following recommendations in several areas to the Government of Saudi Arabia:

- (a) Women's empowerment and public sphere participation:
- Incorporate in law the principle of equality between women and men, and a definition of discrimination based on sex.
  - Establish an independent national machinery for the advancement of women, including with prerogatives to intervene in cases of violence against women.
  - Take measures, including through awareness-raising campaigns, to end the practice of guardianship and abolish existing legal provisions that require a guardian's authorization, such as those pertaining to women's travel or access to services or employment. Ensure public and private institutions, including health services, private businesses and the travel industry, are notified of the changes and monitor their actions in this regard.
  - Facilitate the procedure for women to obtain an identity card and raise awareness in this regard.
  - Establish the facilities and mechanisms for women's equal participation in all public and private institutions, including law practices and the judiciary.
  - Take the necessary measures to enable women to exercise their right to vote and to stand for election in future elections.

- Expedite the implementation of the Eighth Development Plan objectives regarding women's employment and education, including developing training services and increasing the enrolment of women and girls in the sciences, and in applied and vocational specializations in secondary and higher education.
  - Repeal or amend provisions in labour-related codes/regulations, such as Council of Labour Force, No. 1/19M/1405 (1987), which limit women's access to employment.
  - Ensure women's equal participation in decision-making and planning at all levels, including the Shura Council and Council of Ministers. To that end, provide training for women in leadership skills and technical know-how.
- (b) Elimination of violence against women and girls:
- Adopt the draft law on domestic violence, with clear guidelines on implementation mechanisms, a monitoring and coordinating body, and sanctions against perpetrators
  - Adopt a Penal Code clearly defining criminal offences - including rape and the use of torture and cruel, inhuman and degrading treatment or punishment - and specifying penalties for perpetrators
  - Adopt guidelines for government agencies and religious leaders aimed at preventing and ending child and forced marriage
  - Standardize the age of majority in the Kingdom at 18 in accordance with the Convention on the Rights of the Child, and ensure its application to the legal age of marriage
  - Adopt a family law to regulate marriage and divorce, including the prohibition of marriage annulments against the will of both spouses
  - Adopt guidelines for the police and the judiciary on how to investigate, prosecute and rule on cases of rape and sexual violence
  - Establish women's units within the police and the General Prosecutor's office
  - Systematize the gathering of data and statistics on violence against women, disaggregated by type of violence and relationship with the aggressor
  - Enhance the protection and services offered to victims of abuse by social protection committees, including through legal aid and empowerment programmes
  - Conduct awareness-raising campaigns and training for law enforcement officials, the judiciary, health-care providers, social workers, community leaders and the general public, to increase understanding that all forms of violence against women are grave violations of fundamental rights and incompatible with Islamic values
- (c) Judicial and legal reforms:
- Accelerate the establishment of family or personal status courts, staffed with female lawyers, counsellors and social workers and with specialized women's committees
  - Set up a training programme for judges with the Higher Institute for Judges, in cooperation with the Ministry for Justice, to address the international obligations the Kingdom has pledged to respect, including those pertaining to women's rights and the protection of women from violence
  - Provide free legal services to those unable to bear the cost of litigation

- Examine the compatibility of tribal customs pertaining to marriage and divorce with obligations under Sharia law and in international instruments ratified by the Kingdom
- (d) Migrant workers:
- Adopt the addendum to the Labour Law in order to cover domestic workers and ensure the protection of their rights, with adequate enforcement mechanisms
  - Reform the sponsorship system so that workers' visas are not tied to a particular employer/sponsor and workers are able to transfer employment or leave the country without the individual sponsor's consent
  - Effectively investigate and prosecute employers whose treatment of domestic workers violates national and international provisions, in particular in cases of physical/sexual violence
  - Provide shelters, psychosocial and legal aid to migrant victims of abuse
  - Raise awareness among the population about domestic workers' rights and regulations/punishments in case of abuse against them
- (e) International commitments:
- Ratify the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
  - Lift the general reservation to the Convention on the Elimination of All Forms of Discrimination against Women and amend national legislation accordingly
  - Ratify the Optional Protocol to the Convention
  - Strengthen bilateral and multilateral cooperation - as reflected for instance in the Abu Dhabi Declaration of January 2008 - to ensure migrant worker rights and prevent trafficking
  - Issue invitations to the Special Rapporteurs on the human rights of migrants and on contemporary forms of slavery to comprehensively assess the situation of migrant domestic workers
96. I would like to address the following recommendations to the Governments of labour-exporting countries:
- Strengthen pre-departure briefing programmes for migrant workers
  - Increase human resources, especially lawyers, to support migrant workers in Saudi Arabia seeking legal or other assistance
  - Protect migrant workers' rights through bilateral and multilateral cooperation.

## Somalia

### Introduction

During the period under review, the independent expert on the situation of human rights in Somalia visited Somalia twice. First report covers for period from September 2008 to February 2009 (please refer to document A/HRC/10/85) and the second report from 1 to 13 June 2009 (please refer to document A/HRC/12/44).

### Conclusions and recommendations (A/HRC/10/85, para.67-89)

67. In my oral report presented to the ninth session of the Council in September 2008, I had made a number of recommendations for different stakeholders in the Somali crisis. Most of them remain valid. I shall however add some new ones in light of my latest visit to the region and also, most especially, in the light of the election of the new president, the new extended Parliament and the Government of Unity.

#### Recommendations to the new Government of Unity

68. The new Government selected through the Djibouti process will have enormous challenges, one of its main initial ones being to establish itself in Somalia and tackle the issue of security, to build on the steps already taken by the new president. Recommendations could include:

- Making human rights as the foundation of the transition; focus on protecting lives
- Security to allow humanitarian access; measures to reopen schools and develop health care
- Ensure that the new security apparatus which should be put in place has appropriate training and structures to hold perpetrators to account and respect human rights

69. I had suggested in my last report that the Government should seriously endeavour to reopen educational institutions which were shut down for various reasons; that it should refurbish Government hospitals, clinics and other health-care facilities; that it should be seen to be making serious efforts to improve the law and situation in areas under its control. The new Government, to that end, should, for example, ensure timely disbursement of police salaries, which has been a long standing problem. The appointment of a new administration for the Banadir region is a good beginning. In addition, the efforts of the new President and Government to draw more and more recalcitrant elements into the peace process would be a good signal for the people. A genuinely inclusive approach should become the hallmark of the Government, and I am encouraged by the initial steps taken by the President.

70. In regard to the implementation of the Djibouti peace accord, the Government must ensure that the various processes already set into motion are diligently pursued. The discussions on transitional justice mechanisms initiated at the Djibouti conference must continue not only to enhance the awareness of the people but also to promote their participation in the process. The implications of the decisions on the possible establishment of an international commission of inquiry on past human rights and humanitarian law violations in Somalia and the need for the establishment of an international tribunal for the trial of key offenders must be openly discussed. The Government should officially welcome the views of the people on these ideas. A key recommendation in my last report was to ensure people's participation in peacemaking and peacebuilding efforts. The implementation of the provisions on justice and reconciliation in the Djibouti Agreement provides a good opportunity for considering innovative ways in that regard.

71. Another follow up measure required in connection with the peace accord is capacity building of members of the new extended Parliament and the new Government on human rights and humanitarian law issues. I am certain that concerned United Nations agencies are ready to help the Government's efforts in this regard.

#### Recommendations for the Alliance for the Re Liberation of Somalia

72. For the Alliance for the Re Liberation of Somalia (ARS), my key recommendation is that the commitment they have shown for peace and reconciliation in Somalia by their acceptance of the Djibouti peace accord should be followed up by their continued active promotion of the accord. By doing so they will not only reassure the people of Somalia but also help others, such as Asmara based ARS, to choose the path of peace and renounce violence.

73. ARS should also take the necessary measures to build or enhance the capacity of their members to participate constructively in the processes aimed at developing appropriate laws and institutions for a more

law based and human rights oriented society. It should commit itself to improve the capacity of the Government of Unity and the inclusive Parliament to improve the protection of all civilians.

#### Recommendations to the United Nations

74. A number of United Nations bodies are deeply involved in addressing the Somalia crisis. The longest involvement has been that of the Security Council. In recent years it has discussed the situation in Somalia on many occasions, and adopted important resolutions. In my oral report to its ninth session, I made some recommendations for the Council and I continue to see the protection and promotion of human rights and humanitarian law in Somalia as inextricably linked to the political process led by the Special Representative of the Secretary General. In furtherance of that process, I cannot overemphasize the importance of the provision of peacekeeping/stabilization forces in Somalia as foreseen in the Djibouti Agreement. While I appreciate the caution of the members of the Security Council in authorizing troops before improvement of security conditions on the ground, I think it would be prudent to take the risk in acceding to the request of the parties in this regard because a sizeable number of both Government and opposition forces, as well as the respective clans behind them, have come together under a peace agreement. If this opportunity is not seized, it is likely that the situation will get worse.

75. I encourage the Security Council to consider the proposal I made in my last report, echoing that of my predecessor as well as that of some NGOs regarding the establishment of an International Commission of Inquiry or a similar mechanism to investigate violations of human rights and humanitarian law in Somalia (at least those committed in recent years).

76. As for UNPOS, I commend the commitment of the Special Representative to contribute to end impunity and hold those responsible for serious violations of human rights and international humanitarian law accountable. On the basis of my recent talks with people belonging both to the TFG, the Djibouti based ARS, parliamentarians, as well as newly arrived refugees in Kenya and Yemen, I am convinced that the people of Somalia are fed up with war and destruction and genuinely desire the return of peace. If my reading is correct, there may be some hope for the remaining opposition groups to listen to arguments for peace. Even if they do not respond positively, the gesture may be useful and nothing would be lost.

77. I was requested by refugees both in Kenya and Yemen to inform the Special Representative about their wish to be included in the Djibouti peace process. I therefore recommend that appropriate travel authorizations arrangements are made with relevant authorities to consider the participation of refugees in meetings of the peace process outside the country of refuge.

78. I would like to make a recommendation for consideration of the Human Rights Council, which can play an important role in drawing the terrible human rights and humanitarian law situation in Somalia to the attention of the international community. The Council could call for a special session on the situation of human rights in Somalia or at least for a panel discussion. I have recently written to a number of thematic mandate holders on getting together under some mechanism for this purpose.

79. The recommendations I made to UNHCR in my previous report remain valid. In addition, I would recommend that UNHCR, together with OHCHR, and the UNCT, together with the International Organization for Migration (IOM) and civil society, make further representation to the Governments of Kenya and Yemen regarding the urgent need for more land for a potential spike in arrivals of Somali refugees in Kenya and for the burial of the dead bodies from the sea drowning in Yemen.

80. UNHCR should also consider, together with other relevant agencies, to undertake awareness campaigns on the dangers of crossing the Gulf of Aden in unsafe boats. To address the root causes of smuggling and trafficking of boat people from the port city Bossaso in Somalia, UNHCR and IOM could also consider opening sub offices in the relatively peaceful parts of Somalia. Such offices could also consider, with international support, small reinsertion projects for prospective asylum seekers by providing them with humanitarian assistance in safe places. This may help mitigate the flow of new asylum seekers to neighbouring countries and even attract returnees.

#### Recommendations to the Government of Yemen

81. I am impressed by the commitment of the Government of Yemen to welcome and assist Somali refugees in Yemen. Its generosity is indeed commendable. However, there are a few areas where the Government could further improve the situation of the refugees, such as through the issuance/renewal of refugee identification (ID) cards. I was promised that this would be done soon. If it is not done yet, I would welcome its expedition.

82. I am encouraged that the Ministry of Human Rights proposed the establishment of an inter ministerial Drafting Committee for National Refugee Law, including UNHCR as a member of the



Committee. I was told that refugees and asylum matters are governed by various national laws and institutions, and their implementation is sometimes ad hoc, inconsistent and not in accordance with international protection principles.

83. The Government could ensure that the travel weary newly arrived refugees are spared the occasional arrests by army/patrol boats. As the Government of Yemen does not seem to provide clear guidelines, instructions or training to/for the concerned agencies on how to comply with international refugee protection principles in the course of maintaining the integrity of Yemen's borders, the appropriate United Nations agencies and the international community generally should provide the Yemen law enforcement institutions with relevant technical cooperation in terms of capacity-building to help them comply with refugee law and human rights law.

Recommendations to the international community

84. Apart from the long standing humanitarian crisis, Somalia has also been in news for acts of piracy. This has at least led to international attention. In dealing with piracy, the international community should also consider the circumstances contributing to this phenomenon. I was told by many Somalis whom I spoke to that their windfall income from ransom money from the pirates is providing some important services to the poverty ridden, war ravaged population of Somalia. There is thus a link between the situation in Somalia and piracy in Somali waters.

85. I would also urge the international community to help the Government of Somalia with financial, technical and other assistance in discharging its responsibilities. There is now a greater need for such assistance in view of the fact that the Government would have to be engaged in activities and efforts to win over the support of the population towards efforts for peace and reconciliation.

86. The international community should consider the request of the Government of Yemen, conveyed to me in the course of my trip, regarding the health care needs of the Somali and other refugees in that country. Providing scholarships to eligible Somali refugees in Yemen and Kenya would also be a good investment for human resource development for Somalia of the future.

Recommendations for the Office of the United Nations High Commissioner for Human Rights

87. During my trip to Yemen, UNHCR raised concerns about the human rights violations in the refugee camps in Yemen, in particular on the need to monitor and document cases of sexual and gender based violence. Refugees are also allegedly beaten up and women are stoned by elders in the name of sharia. It would, therefore, be useful if OHCHR could develop collaboration with the Yemen Ministry of Human Rights, UNHCR, IOM and the Danish Refugee Council (DRC) offices in Yemen to monitor and document the human rights abuses in the camps and identify solutions.

88. I welcome the process of strengthening the human rights presence in Somalia within UNPOS with the proposed four international and one national staff. However, in light of the difficult security situation, as exemplified by the recent attack of 29 October on the United Nations compound in Hargeisa, the UNPOS HRU needs to be strengthened further, including by appointing additional human rights officers to the unit, to adequately address needs related to monitoring, public reporting, advisory services and capacity building activities.

89. I support the Human Rights Watch recommendations to OHCHR, published in its latest report "So much to fear – war crimes and devastation of Somalia", on the need for UNPOS Human Rights Office to have further expertise [on children, and] on monitoring of sexual and gender based violence. If monitoring inside Somalia is not possible due to security concerns, OHCHR may consider focusing on documenting the experiences of refugees in Kenya, Djibouti, and Yemen and of displaced people in Somalia.

### **Conclusions and recommendations** (A/HRC/12/44, para.85-108)

#### RECOMMENDATIONS

##### A. For the Government

85. The most important task for the Government is to foster confidence in the minds of the people that better days are ahead and that it is committed to bringing them about. The demonstration of sincere will by the Government will be of primary importance in this regard.

86. With regard to the protection of basic human rights, including the right to life and safety, there must be a clear demonstration that the Government is taking all measures possible in this regard, including those necessary to ensure that its own security forces are not the source of

violations. Human rights abuses are unacceptable whoever commits them, but the Government has special responsibilities to protect. An excellent beginning would be to dismiss officials and commanders who are known for their corruption, inefficiency and violation of human rights and humanitarian laws. The naming of a human rights focal point who could liaise with the United Nations and others in this regard would be very useful.

87. Measures to end the deep-rooted culture of impunity in Somalia and to ensure accountability for all Government servants must be a key priority. As a party to the Djibouti Agreement, the Government is committed to taking the necessary measures to deal with all abuses of human rights and international humanitarian law committed throughout the entire Somali conflict. It must honour its commitment, however challenging that task may be. Apart from developing mechanisms to deal with the perpetrators of past crimes, the Government will also have to take measures to prevent impunity in the future. To that end, it will have to rebuild and re-orient the security forces with a command and control leadership that promotes professional behaviour.

88. Capacity-building and the training of Government forces and officials on human rights and humanitarian law principles should continue as long as old habits and practices remain. The United Nations is committed to helping in this regard. That help must be used on a priority basis. More specifically, arrangements will have to be made to train and brief the new authorities - presidential office, Government and parliament - to create an awareness of their obligations with regard to human rights and the implementation of ratified treaties and covenants. These training sessions could be held alternatively in different locations in the country where circumstances permit, and include local, regional and national authorities.

89. Training and briefing sessions should include strategies to raise awareness of the human rights framework and what it means in practice, including increasing the participation of women in all processes. Over time, support for establishing parliamentary oversight mechanisms and an independent national body to promote and protect human rights will also be necessary. Ensuring the incorporation of human rights into the drafting process of a new constitution will be an important task for the coming months.

90. The assurances given by the Prime Minister during his meetings with the independent expert to set up an independent national human rights commission must be followed up in the shortest possible time, notwithstanding the challenges that an ongoing conflict poses.

91. An important challenge for the Government will be the introduction of sharia law as the source of legislation. The task of adopting legislation in full compliance with international standards will be an extremely difficult task. The independent expert is pleased to learn that UNDP is already liaising with the Government in this regard.

92. Since the tasks facing the Government to improve the human rights of the people is an enormous one, the Government should draw up a road map with clear immediate, medium- and long-term objectives. While improving the physical security should indeed remain the top priority in the immediate term, there are other objectives that could be included. The Government could immediately pledge to set up activities relating to the exercise of certain economic, social and cultural rights that have been denied for so long in areas where circumstances permit. For example, higher education and vocational training of selected youths from Mogadishu and other areas of south-central Somalia could be set up in Puntland. Similar activities could be considered for training teachers and nurses. Indeed, any activity that would create an impression in the minds of the people that the Government is concerned about their welfare would be useful.

93. The Government, with the assistance of the international community, should develop and implement formal, concrete, time-bound plans of action to halt the recruitment and use of children. It should also facilitate the release of all children recruited or used unlawfully by its armed forces and secure their access to protection and reintegration programmes.

B. For the international community

94. It is of utmost importance that the international community recognize that Somalia is not only facing one of the worst humanitarian crises in the world today, but also a very serious security challenge linked to global terrorism which, if not handled urgently, could worsen. Outside help that is reportedly constantly arriving in support of the opposition appears to have accelerated in recent months. Not only is more money being injected, but more foreign fighters are also being introduced. This must be checked with a greater sense of urgency than has been the case to date.

95. Nearly two decades of almost incessant warfare has shattered the lives of the ordinary people of Somalia, who have somehow managed to survive. They live in a fragile State in which many national institutions have more or less been destroyed or severely damaged and require rebuilding, in terms of both infrastructure and capacity. The police and security forces in the entire south-central region are in a very poor state and must be revived, revamped and reconstructed. In Somaliland and Puntland, where institutions exist, there are gaps that must be filled and additional capacity built. Access to justice in all parts of the country is very limited, especially for women. Turning the situation around will require the wholehearted support of the international community.

96. The international community must therefore ensure that financial and other resources required by the Government are fully provided. The pledges made at the international conference held in Brussels on 23 April 2009 were a good beginning, but not enough for actual needs.

97. Fortunately, the attention of the international community has recently turned to Somalia, albeit mainly in relation to the growing menace of piracy along the Somali coast. It is also fortunate that there is growing international recognition that the problem of piracy cannot be dealt with without addressing the root cause linked to the chaos and deprivations in Somalia. In a country with hardly any source of livelihood for youth, where the fish resources in the surrounding waters are plundered by foreign fishing trawlers and where nuclear and other wastes are dumped by foreign ships on the coasts unchallenged by any Somali naval force, piracy is a lucrative - albeit dangerous - alternative source of income for many. Unless this reality is taken into account, piracy cannot be eliminated. The independent expert strongly recommends that, among other things, the programmes implemented by the Government of Puntland in this regard be supported by the international community.

98. The international community should consider providing scholarships to Somali students, particularly those staying in refugee camps in Kenya and Yemen. Long years of armed conflict have taken a heavy toll on education in Somalia. There will be a serious dearth of educated and trained staff to assist in running the affairs of the State when peace returns.

99. To facilitate the involvement of all States, large or small, rich or poor, in supporting the process of peace, reconciliation and reconstruction in Somalia, it is important to bring the plight of the people of Somalia into focus. The independent expert is deeply pained at the ignorance of otherwise knowledgeable people about the situation in Somalia. For most, it is another problem in another place. Most are not aware of the gravity of the situation in Somalia and the terrible human rights and humanitarian law abuses that have been taking place there for so long. Ways and means must be found to change this state of affairs. The organization of a special session of the Human Rights Council would be a good start. The efforts made by the independent expert to raise the profile of the crisis have, it seems, failed to make an impact to date.

#### C. For the United Nations

100. In Somalia, the United Nations is faced with one of its most difficult challenges. On the one hand, it has the task of negotiating peace in a country long ridden by armed conflict; on the other, the difficulties it faces relating to activities in the field of human rights, humanitarian assistance, recovery and development. To date it has done a reasonably good job, given the circumstances, but could certainly do a better one.

101. While the peace process is being ably advanced by the Special Representative of the Secretary-General, the independent expert would only recommend that serious considerations be

given by him and others to finding ways and means to involve and ensure the full support of the Puntland and Somaliland authorities in the process. It will be important to have their full support for all United Nations activities in Somalia. The Governments of Puntland and Somaliland already host a number of important United Nations activities, such as the training of police and security forces and of members of correctional and judicial services, which will have an important bearing on the future of Somalia. United Nations agencies should now begin their long-awaited move to undertake their activities for Somalia from within the country itself, by making Puntland and Somaliland the hubs of their activities. This will have a psychological impact on the people which would be important for the success of the peace process in Somalia. The independent expert is pleased that the Deputy Special Representative of the Secretary-General recently visited Somaliland and that the Special Representative will be visiting Puntland in early September, after the signing of the agreement between the Transitional Federal Government and Puntland in August 2009.

102. The independent expert welcomes the efforts made by UNPOS to progressively increase the presence of its human rights officers in Somalia, through its frequent missions to Somaliland and Puntland, and to Mogadishu and other parts of Somalia when security permits. The independent expert hopes that this will lead, in the shortest possible time, to the establishment of their presence on the ground on an enduring basis. The independent expert has noted the increase in the number of staff of the UNPOS Human Rights Unit and has been informed that additional staff will be deployed soon to strengthen its capacity. It is important to have a clear road map for the durable presence of United Nations human rights staff in Somali itself.

103. The implementation of Council resolution 10/32 will enable UNPOS and OHCHR to step up cooperation with and support for national and regional Somali institutions through a comprehensive agreement. A framework for UNPOS/OHCHR technical cooperation and assistance in the field of human rights has been developed in collaboration with the Somali authorities, covering six areas of support: (a) strengthening legislation/Government capacity in human rights; (b) support for the establishment of a police force more compliant with human rights standards; (c) corrections and judiciary; (d) support for addressing impunity, justice and reconciliation; (e) monitoring and reporting; and (f) education and public awareness-raising on human rights. The independent expert hopes that the framework will be endorsed in the near future and that it is implemented immediately.

104. While commending the above-mentioned efforts, the independent expert believes that the United Nations as a whole should do more in Somalia. He recommends that UNDP, UNHCR, UNICEF and UNESCO also consider strengthening their presence in Somalia, including in Puntland and Somaliland. They could share the tasks of training law enforcements officials, corrections/judicial officials, civil society organizations, education officials, teachers, students, doctors, nurses and so on, from all regions of Somalia. Their strengthened presence in the field will make a difference and send a strong message to the authorities in Somalia about the commitment and dedication of the United Nations to the cause of human rights in that country.

105. UNPOS and OHCHR should also consider organizing, in collaboration with other United Nations agencies as necessary and with the participation of lawmakers, members of the judiciary, including those from Somaliland and Puntland, and experts in both Islamic and international law a workshop to address the harmonization of Somali laws, in particular the harmonization of Islamic sharia law and customary and international human rights and humanitarian law. Such a workshop could also benefit from the participation of relevant special procedures mandate holders.

106. From the briefings with the United Nations Coordinator and the representatives of United Nations agencies serving Somalia from their bases in Nairobi, the independent expert is aware of the immediate, medium- and long-term plans that the Organization as a whole has for humanitarian assistance, recovery and development in Somalia. Steps should continue to be taken

by the agencies to serve Somalia from inside the country, for example from Puntland and Somaliland, in the shortest possible time.

D. For the African Union

107. While recognizing the importance of the role played by AMISOM peacekeepers in the protection of certain strategic areas in Somalia (such as villa Somalia, the airport and sea ports), there is a need for the African Union to consider providing AMISOM with a protection mandate, including the use of force if necessary, as provided for in Chapter VII of the Charter of the United Nations to protect civilians, including women, children, Somali minorities, internally displaced persons, human rights defenders, aid workers and United Nations staff, among others. However, extreme care should be taken to ensure proper training of the troops before entrusting them with these tasks. The independent expert commends Burundi for sending another battalion to Somalia, and encourages other States Members of the African Union, the League of Arab States and the Organization of the Islamic Conference to strengthen and augment the capacity of AMISOM.

## VIII. CONCLUSION

108. The independent expert cannot overemphasize the importance of concerted international action to bring the humanitarian crisis in Somalia, one of the contemporary world's longest and most painful crises, to an end in the shortest possible time. He has two reasons for this. Firstly, in terms of the violation of human rights and humanitarian law, including possible war crimes committed in Somalia for almost two decades, the Somali crisis must be regarded as one that shocks the conscience of mankind. It is imperative, therefore, that the international community show greater resolve in finding a solution to it. In doing so, it must also seek to eliminate the culture of impunity that has flourished in Somalia for so long. In the context of heightened international awareness of the need to eliminate impunity from all society in order to strengthen the international regime for human rights and the rule of law, the situation in Somalia offers a good opportunity for example-setting. Secondly, the conflict in Somalia has reached a critical juncture which, if handled properly, may yield positive results soon. This opportunity must not be missed and should be utilized with greater commitment and creativity by the international community than has been exhibited to date. Otherwise, the forces of terror and violence will continue to triumph not only in Somalia, but spread elsewhere in the region too.

## Spain

### Introduction

During the period under review, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Spain from 7 to 14 May 2008 (please refer to document A/HRC/10/3/Add.2).

### Conclusions (A/HRC/10/3/Add.2, para.51-52)

51. The Special Rapporteur acknowledges the State's long experience in fighting terrorism. During his visit he was able to identify a number of best practices, including measures to support the victims of terrorism; the State's international efforts to promote respect for human rights in the fight against terrorism; measures to ensure transparency at the trial of those charged with the Madrid bombings of March 2004; and the procedural guarantees for them.

52. The legislative framework for counter-terrorism in Spain has been to a considerable degree developed as a tool to fight ETA. This is problematic when the legislation is applied to international terrorism. Furthermore, the vagueness of certain provisions on terrorist crimes in the Spanish Penal Code carries with it the risk of a "slippery slope", i.e. the gradual broadening of the notion of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence against members of the general population. This is particularly worrying in light of the measures triggered by the classification of crimes as terrorism: the application of incommunicado detention; the exclusive jurisdiction of the *Audiencia Nacional*; the applicability to terrorist suspects of up to four years of pretrial detention; aggravated penalties; and often also modifications in the rules related to the serving of sentences.

### Recommendations (A/HRC/10/3/Add.2, para.53-65)

53. The Special Rapporteur emphasizes that the successful and legitimate fight against terrorism requires that provisions on terrorist offences strictly adhere to the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights (the Covenant), so that all elements of the crime are in explicit and precise terms encapsulated in the legal definitions of the crimes. In relation to articles 571-579 of the Spanish Penal Code the Special Rapporteur recommends that the Government initiate a process of independent expert review over the adequacy of the current definitions. Such a review should combine domestic and international expertise in the fields of human rights and criminal law and result in concrete proposals for amendments. To facilitate the review, the Special Rapporteur recommends, as his own observations on the need to improve the existing definitions, that:

(a) Article 574 providing for the punishment of "any other crime" be revised in order to comply with the degree of precision required by the principle of legality, and is exclusively applied to crimes that comprise the intentional element of causing deadly or otherwise serious bodily injury, as a defining element for offences of a genuinely terrorist nature;

(b) The crime of collaboration, as established in article 576, be clearly defined in a manner that makes it possible for the individual to regulate his or her conduct, and formulated in a way that clearly establishes what elements of the prohibited conduct make it a terrorist crime. The Special Rapporteur stresses that, when defining crimes associated with terrorism a clear distinction is made between the intent to terrorize a population through violent means and the perceived goals, which may not per se be of a criminal character;

(c) Article 577 be applied to "urban terrorism" only in cases where a link between the conduct of the accused and the intent of furthering terrorist violence, as defined according to international norms and standards, has been established;

(d) The current crime of glorification in article 578 be amended to be applied exclusively to acts intended to incite the commission of a terrorist crime and carrying the risk that such acts are subsequently committed. In this regard, the Special Rapporteur takes the view that other statements falling under the broader notion of "apology" should not be fought with the tool of criminal law.

54. The Special Rapporteur recommends that any proscription of illicit organizations is carried out with scrupulous regard to the conditions required when restricting freedom of association and freedom of expression, i.e. in accordance with the law and the principles of necessity and proportionality. The proscription of organizations, together with the application of vaguely and broadly formulated provisions relating to terrorist crimes, ultimately undermines the strong moral message inherent in strict definitions based on the inexcusable nature of all acts of terrorism.

55. Political pluralism plays a fundamental role in the existence of a genuinely democratic society, and any measures taken by the State to limit the right to political participation must be of a strictly exceptional nature and predictable by law. The Special Rapporteur strongly recommends that Spain brings vaguely formulated expressions in the Organic Law on Political Parties in line with international standards on the limitation of freedom of expression, so as to avoid any risk of applying it to political parties that share the political orientation of a terrorist organization, but do not support the use of violent means.

56. The Special Rapporteur calls for judicial proceedings that in the most scrupulous manner guarantee the procedural safeguards of persons affected by judicial measures that aim to prohibit political candidates from participating in elections, on grounds that they are linked to political parties that have been declared illegal for their connections to a terrorist organization. This is particularly important in regard to electoral groups that have been created with the single purpose of standing for elections and where consequently no evidentiary material exists relating to prior actions by these groups.

57. The Special Rapporteur recommends that Spain revise the existing mechanisms of appeal in terrorist cases, including in cases where a person is convicted by the Supreme Court as the first instance court, and establish a system that is in compliance with article 14 (5) of the Covenant on the right of all persons convicted of a crime to have their conviction and sentence reviewed by a higher court.

58. The Special Rapporteur requests the Spanish Government to give consideration to the possibility of including terrorist crimes in the jurisdiction of ordinary territorial courts, instead of a single central specialized court, the *Audiencia Nacional*.

59. The Special Rapporteur calls for reducing the use of pre-trial detention in cases that under current Spanish law have a link to the notion of terrorism but do not entail the intention of deadly or serious violence. He recommends that Spain reduce the duration of pre-trial detention. A general pattern of treating pre-trial inmates charged with terrorist crimes differently to other inmates and subjecting them systematically to a closed regime might have serious repercussions on their right to a presumption of innocence.

60. The Special Rapporteur calls for reconsideration by the Spanish authorities of the classification of “Al-Qaida” applied to a number of convicted and pre-trial inmates categorized as “Islamist terrorists”. Furthermore, the notion of “Islamist terrorist” runs the risk of giving rise to misconceptions as to the nature of Islam, and the Special Rapporteur therefore recommends that the Spanish authorities bring into use terms that are appropriate to a multicultural society which includes a number of coexisting religions.

61. Concerned about information related to discriminatory treatment of Muslim detainees by public officials, including religion-related insults and practical obstacles to the saying of prayers, the Special Rapporteur urges Spain to provide penitentiary and law enforcement staff with adequate human rights education and to take disciplinary measures against any official involved in discriminatory conduct.

62. The Special Rapporteur recommends the complete eradication of the institution of incommunicado detention as this exceptional regime not only entails a risk of prohibited treatment against the detainee, but also makes Spain vulnerable to allegations of torture and as a result weakens the legitimacy of its counter-terrorism measures. The Special Rapporteur calls for the systematic application of preventive measures against torture and ill-treatment, including in particular continuous video surveillance over detention facilities and examinations by physicians of the detainee’s choice.

63. The Special Rapporteur is gravely concerned about allegations of torture and ill-treatment by terrorism suspects who have been held incommunicado, and about information concerning the failure of the Spanish authorities to systematically address these allegations. The Special Rapporteur strongly recommends the Spanish authorities to ensure that prompt, independent, impartial and thorough investigations are conducted in any case where there is reason to believe ill-treatment may have occurred, and to bring to trial all persons responsible for such offences. Systematic compliance with all aspects of the international prohibition against torture, together with the abolition of the incommunicado regime, would strengthen the credibility of counter-terrorism measures by the law enforcement bodies as a whole and would at the same time further ensure that those falsely accused of ill-treatment are cleared.

64. The Special Rapporteur is extremely concerned about the decision by the *Audiencia Nacional* to approve an extradition based on diplomatic assurances in respect of the risk of torture, and about the recent implementation of the extradition despite repeated calls by the Special Rapporteur to the contrary. He urges Spain to comply with its international obligations arising from the absolute prohibition of torture.

65. Recalling that extraordinary renditions entail serious human rights violations, and that any State knowingly facilitating such transfers is complicit in and responsible for the violation, the Special Rapporteur urges Spain to thoroughly and independently investigate all circumstances surrounding its involvement in CIA rendition programmes.



## Tajikistan

### Introduction

During the period under review, two special procedures mandate holders visited the country. The Special Rapporteur on violence against women, its causes and consequences visited the country from 15 to 23 May 2008 (please refer to document A/HRC/11/6/Add.2).

**Conclusions and recommendations** of the The Special Rapporteur on violence against women, its causes and consequences (A/HRC/11/6/Add.2, para.80-84)

80. Any assessment of violence against women and women's rights in Tajikistan needs to bear in mind the continued challenges the country has faced since independence, with respect to the economic and social transition, high levels of poverty, migratory flows and the remnants of its civil war. Despite significant economic growth, much of the population resorts to subsistence farming and migration to make ends meet.

81. The consequences of these challenges have been particularly dire for women. Although gender equality is guaranteed in law and policy, the gains achieved during the Soviet era have eroded. The resurgence of patriarchal discourses and practices, often articulated in religious overtones, have placed an additional burden on women.

82. As a result, women's subordination has deepened, increasing their susceptibility to abuse and violence, which is experienced in silence and condoned by society at large. Lack of a protective infrastructure, women's legal illiteracy and issues pertaining to marriage registration, residency, and the rise of early and polygamous marriages further aggravate their vulnerability to abuse and prevent them from escaping it.

83. Women's access to justice and their protection from violence have to date been inadequate. Besides long-awaited improvements in law and judicial practices, other measures are needed to address the broad tolerance of violence within society and support women's empowerment to be free from abuse.

84. In light of the above, I would like to make the following recommendations to the Government of Tajikistan, many of which are relevant to international organizations and donor agencies:

- (a) Women's empowerment and gender equality:
- Strengthen the institutional capacity of the Committee for Women and Family Affairs with enhanced political authority and sufficient human and financial resources at national and local levels
  - Expand the mandate of the Ombudsperson's office to include the promotion of women's rights and elimination of violence against women
  - Establish judicial chambers on family matters, with the mandate to examine issues such as divorce, property and child alimony in light of the Convention on the Elimination of All Forms of Discrimination against Women
  - Encourage the media to play an active role in promoting women's rights and avoid reporting that would perpetuate gender stereotypes and prejudice
  - Promote the value of girls' education among parents, teachers, and girls themselves, including by funding special programmes in areas with low schooling rates for girls, increasing scholarships for girls to attend higher education
  - Amend the Law on Education to raise the grade of compulsory education from 9 to 11

- Prioritize vocational training programmes for women and girls who are particularly marginalized, abandoned and victimized to abuse
  - Ensure the rights of rural women to land use and management by providing them with legal and business training and simplifying the process of registration of private farms
  - With support from international organizations, strengthen and systematize existing policies/programmes on labour migration, including its gendered consequences, and develop training and support system for women left behind as well as women migrants
- (b) Elimination of violence against women and girls:
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
  - Adopt the Bill on Social and Legal Protection against Domestic Violence, including provisions for protection and restraining orders, and provide adequate funding and instructions to relevant State bodies for its implementation
  - Treat violence against women as a criminal offence, and hence investigate and prosecute them *ex officio*
  - Establish specialized female law enforcement units
  - Strengthen cooperation between the police and crisis centres through, for instance, the signing of a Memorandum of Understanding and instituting referral systems at district/national levels
  - Ensure that adequate funding for crisis centres is provided, and increase the number of shelters, bearing in mind geographical coverage
  - Establish centres that provide psychosocial, legal and residential services to girls under 18
  - Adopt protocols to stipulate and regulate the procedures to be taken by State bodies to report, register, respond to and refer cases of violence against children
  - Conduct and support awareness-raising campaigns on domestic violence and women's rights, which specifically target religious and community leaders, girls and boys, men, and women particularly in rural areas
  - Incorporate modules on the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women and national provisions on gender equality and domestic violence in the programmes of the Military Academy and other public service training institutions, including the judiciary
  - Review sentences against women detainees who murdered their partners because of domestic violence, taking into account the mitigating circumstances around their crime
- (c) Marriage practices:
- Amend the Family Code to increase the minimum legal age of marriage for women and men to 18, in line with the Convention on the Rights of the Child and general recommendation 21 of the Committee on the Elimination of Discrimination against Women

- Issue instructions to religious leaders, in cooperation with the Council of Ulema, to keep a written record of religious marriages performed and to conduct religious marriages only where proof of civil marriage is made available
  - In cooperation with national and international organizations and religious leaders, conduct awareness-raising campaigns on the importance of civil registration of marriages, particularly in rural/remote areas
  - Lower marriage registration fees or offer compensation for the poorer segment of the population
  - Establish a centralized database for the civil registration of marriages
  - Cooperate with Governments of Tajik-migrant receiving countries in taking measures to prevent polygamous marriages across borders
- (d) Residency registration and housing:
- Raise awareness among the population, in particular women, of the importance of registering their residency at the place they actually live
  - Include in the Housing Code or the Law on Domestic Violence provisions to assist women victims of violence to escape violent relationships, such as through the provision of financial compensation or alternative housing
- (e) Statistics and research:
- Compile specific data on violence against women, especially domestic violence, for instance through the classification of domestic violence as a separate crime in police and prosecution records, and the introduction of a specific module on violence against women in surveys
  - Set up a department for the reporting of complaints about domestic violence and management of related statistics within the Ministry of Internal Affairs, as foreseen in the State Programme on Equal Rights and Opportunities
  - Strengthen exchange of data between crisis centres and government bodies
  - Gather data on the types of abuses faced by girls under age 18
  - Promote and support nationwide research on women's status, including domestic violence, trafficking, suicides, marriage practices, and access to housing
  - Develop a comprehensive database on migration, including by adding a module in the forthcoming national census

## Togo

### **Introduction**

During the period under review, the Special Rapporteur on human rights defenders visited Togo from 28 July to 4 August 2008 (please refer to document A/HRC/10/12/Add.2).

### **Conclusions** (A/HRC/10/12/Add.2, para.92-95)

92. Since 2005, Togo has been engaged in a process of political transition and, as a consequence, the prospects for the promotion and protection of human rights are improving. The legal and institutional framework for the promotion and protection of human rights enables human rights defenders to operate in a satisfactory way. In particular, the Minister for Human Rights and Consolidation of Democracy and the National Commission for Human Rights are the two most supportive institutions of the work of human rights defenders. However, both entities suffer from insufficient funding, which may impact on the situation of human rights defenders.

93. Despite the above-mentioned framework, human rights defenders in Togo remain faced with a series of challenges that impede their legitimate activities. They must first achieve unity and coordination within the defenders community. Other challenges include the stigmatization of defenders by authorities who see them as belonging to the political opposition, the plight of women defenders and the difficulties inherent to their work, unjustified delays in delivering registration certificates to NGOs, illegitimate restrictions on the exercise of the rights to freedom of peaceful assembly and freedom of opinion and expression, and impunity for past abuses against human rights defenders.

94. The 2010 presidential elections generate fear and anxiety among the human rights defenders community. The Government of Togo will have to fully allow human rights defenders to monitor these elections, which will echo its commitment to the principles of democracy and human rights.

95. The Special Rapporteur looks forward to a constructive dialogue with the Government of Togo on the situation of human rights defenders in all parts of the country. She calls on OHCHR Togo, United Nations agencies and other international actors to continue assisting the Government of Togo in fulfilling its human rights obligations, and therefore ensuring a better environment for human rights defenders.

### **Recommendations** (A/HRC/10/12/Add.2, para.92-119)

Recommendations for the consideration of the Government and relevant State actors

96. Take concrete steps to give legitimacy to human rights defenders - within the capital and in the regions - by removing the stigmatization of being accused of affiliation to political parties.

97. Continue to ensure that human rights defenders operate within a conducive environment.

98. Enhance the capacity of human rights defenders.

99. Speed up the delivery of the registration certificate to NGOs in order to facilitate their activities.

100. Translate the Declaration on human rights defenders in Kabye, Ewe and other main local languages.

101. Recognize the legitimate work of women human rights defenders, acknowledge it as human rights work, ensure the removal of all obstacles that impede their work, and take proactive measures to support such work.

102. Strengthen the capacity and the visibility of the Ministry of Human Rights and Consolidation of Democracy and the National Human Rights Commission.
103. Support financially the four-year national plan of action and programmes of promotion and protection of human rights elaborated by the Ministry of Human Rights and Consolidation of Democracy.
104. Sensitize the police, gendarmerie and military officers as well as judicial and prosecution officials on the role and activities of human rights defenders and the National Human Rights Commission.
105. Support the draft Bill calling on the inclusion of references to the Declaration on human rights defenders in national legislation prepared by the CNDH. The Ministry for Human Rights and Consolidation of Democracy and the Parliamentary Human Rights Commission must support the law before the Parliament.
106. Ensure that HAAC lays out the criteria under which the activities of various organizations are assessed and that its actions are fair and transparent.
107. For HAAC, the Minister of Communication and other specialized institutions: engage in capacity (notably training on journalist ethics) and confidence-building activities for journalists.
108. Invite the United Nations Special Rapporteur on the independence of justice and lawyers to monitor closely the progress of the reform as to ensure that it will have a real impact on the judiciary.
109. Make the fight against impunity for violations against human rights defenders a priority. The Truth and Reconciliation Commission must address seriously and thoroughly all violations committed against human rights defenders.
110. Implement the Global Political Agreement, in particular the provisions on the respect for human rights.
111. Fully involve human rights defenders in the reconciliation process.
112. Fully involve human rights defenders in the monitoring of the 2010 presidential elections.

#### Recommendations for the consideration of the international community and donors

113. Support the transition process until the end and continue supporting human rights defenders, both in terms of funding and capacity-building.

#### Recommendations for the consideration of human rights defenders

114. End the fragmentation of the human rights defenders community and come up with a single strong voice.
115. Improve coordinating networks aimed at strengthening the protection of defenders, particularly those outside the capital.
116. Recognize the work of women human rights defenders, and empower them.
117. Expand capacity among defenders in the capital and in the regions to make full use of the existing national, regional and international human rights mechanisms and institutions.

Recommendations for the consideration of all stakeholders

118. Carry out countrywide civic education to enhance the appreciation of the activities of human rights defenders.

119. Disseminate the Declaration on Human Rights Defenders and the Universal Declaration of Human Rights within the context of their 10th and 60th anniversary respectively.

## Turkmenistan

### Introduction

During the period under review, the Special Rapporteur on the freedom of religion or belief visited Turkmenistan from 4 to 10 September 2008 (please refer to document A/HRC/10/8/Add.4).

### Conclusions (A/HRC/10/8/Add.4, para.52-62)

52. Turkmenistan is a fast progressing country. A high level of tolerance and a climate of religious harmony prevail at the societal level in Turkmenistan; however, there still continues to be mistrust of religious organizations and collective manifestation of religion. The dispassionate attitude, and yet respect, that most citizens display toward religion is conducive to the climate of religious harmony that prevails in Turkmenistan's society. Fears that this harmony might be disrupted by external extremist groups have, however, led State officials to be suspicious towards certain religious communities, in particular those believers who are not Sunni Muslim or Russian Orthodox. Likewise, officials indicated their concerns that certain groups may undertake illegal activities under religious cover. Yet, the Special Rapporteur would like to emphasize that the enactment and implementation of laws which unduly restrict freedom of religion or belief cannot provide an efficient and long-term solution in order to curb criminal activities which can and must be sanctioned by due process and general laws existing in the country.

53. Religion is a complex issue and law-making in this area is equally sensitive. Legislation on religion must conform to international human rights standards. It should be directly related to the objectives it propounds to achieve, such as promoting religious tolerance or facilitating the transparent establishment of religious groups. Vague or excessive legislative provisions in the area of freedom of religion or belief are susceptible to create tensions and give rise to multiple problems rather than solving them.

54. Moreover, such provisions may be subject to arbitrary interpretation or abuse of discretion and discrimination by the law enforcement agencies and local administration. When raising with the authorities various allegations of abuse or harassment of religious communities, the Special Rapporteur noted that law enforcement officials mostly denied any responsibility and instead argued that their task was limited to the implementation of domestic law. As such, they justified their actions as legal even though certain provisions of the law had led to abusive practices. The Special Rapporteur would like to emphasize that the authorities also have to abide by human rights standards. Article 6 of the Constitution of Turkmenistan recognizes the precedence of generally recognized norms of international law. In addition, article 2 of the Religious Organizations Law underlines that if an international treaty to which Turkmenistan is a signatory party sets rules which are different from those contemplated in this law, the rules of the international treaty shall apply.

55. The role of the judiciary is vital for the application of any specific legislation on religious issues. Indeed, all laws have to be interpreted by an independent judiciary, which should guarantee protection and offer means of legal redress for individuals whose rights, including freedom of religion or belief, are violated.

56. The imposition of legal or policy restrictions by the authorities of Turkmenistan on registration, places of worship, religious material, religious education and proselytism do, in some instances, amount to undue limitations to freedom to manifest one's religion or belief, but also to other rights enshrined in the International Covenant on Civil and Political Rights. In the case of restrictions on religious material, proselytism and religious education, there may be repercussions on freedom of expression. With regard to restrictions on places of worship, there may be adverse implications on freedom of association with others. The Special Rapporteur would like to emphasize that the burden of justifying any limitation on freedom of religion or belief lies with the State. Consequently, the authorities need to demonstrate that these tight restrictions are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others and that they exercised this control in a reasonable manner.

57. On registration, the Special Rapporteur wishes to reiterate that the right to freedom of religion or belief is not limited to members of registered communities. Registration should not be a precondition for practising one's religion, although it is appropriate to require registration for the acquisition of a legal personality and related benefits. In the latter case, registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the length of time a particular religious group has existed. Furthermore, registration should not depend on the review of the substantive content of the belief, the structure of the faith group and methods of appointment of the clergy. Finally, no religious group should be empowered to decide on the registration of another religious group.

58. On places of worship, the Special Rapporteur noted that the authorities are particularly concerned at the gathering of individuals, be it for religious purposes or other reasons, which might foster the development of subversive elements. She would like to recall that freedom of association with others is guaranteed by article 29 of the Constitution of Turkmenistan and by article 22 of the International Covenant on Civil and Political Rights, and that it may only be legitimately restricted on grounds specified in this article.

59. The firm control on religious literature, religious education and proselytism exercised by the authorities may, in some instances, contravene article 28 of the Constitution of the Turkmenistan as well as articles 18 and 19 of the International Covenant on Civil and Political Rights. The Special Rapporteur believes that the right to freedom of expression as protected by international standards provides a certain latitude for religious communities in the drafting and dissemination of their literature, even in cases where they do not agree with other religions, provided that they do not amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as prohibited by article 20 of the International Covenant on Civil and Political Rights.

60. On proselytism, the Special Rapporteur is of the view that no restrictions or sanctions should be imposed on peaceful missionary activities which do not amount to coercion. While certain missionary activities intend to claim the superiority of a religion over other religions or beliefs and thereby might give the impression that the culture of religious tolerance in Turkmenistan is being challenged, the Special Rapporteur would like to recall that proselytism is itself inherent in religion. Articles 18 and 19 of the International Covenant on Civil and Political Rights protect the right of all religious or belief communities to believe in, express, argue for, and work actively in support of their own truth claims. In a democratic and pluralistic society, the role of the State is therefore to ensure that all religious or belief communities tolerate each other and that they have sufficient space to express their views, even if these appear to be competing or contradictory in some cases.

61. During her mission, the Special Rapporteur was very encouraged by the political will expressed by certain of her official interlocutors to address the issue of conscientious objection and to find a suitable solution. She is aware that the authorities have attempted to accommodate conscientious objectors by offering them military positions which do not involve the use of weapons. Although this demonstrates the willingness on the part of the authorities to offer an alternative to these persons, the Special Rapporteur would like to draw the Government's attention to resolution 1998/77 of the Commission on Human Rights. Accordingly, conscientious objectors should be provided with various forms of alternative service compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature.

62. The right to change one's religion or belief is guaranteed by the Constitution and is generally respected in the tolerant and inclusive society of Turkmenistan. Yet, the Special Rapporteur noted that ethnic Turkmen identity seems to be tightly linked with Sunni Islam and that ethnic Turkmen citizens who chose to convert away from Sunni Islam appear to face more difficulties than citizens from other ethnic backgrounds.

**Recommendations** (A/HRC/10/8/Add.4, para.63-70)



63. Several provisions of the amended Religious Organizations Law are incompatible with international human rights standards and contradict the Constitution of Turkmenistan in some instances. The Special Rapporteur urges the Government to review the Religious Organizations Law, so that it no longer infringes on the rights of individuals and groups in their exercise of freedom of religion or belief. In doing so, the Government should ensure that interested stakeholders at the national level be included in the reviewing process, in order to offer them the opportunity to provide valuable input to the revised draft legislation. Likewise, the Special Rapporteur is of the view that recommendations of relevant international or regional organizations relating to the revision of the Religious Organizations Law should be considered carefully. The Special Rapporteur remains available if further comments on draft legislation on religious issues are deemed necessary.

64. The Special Rapporteur recommends that the prohibition on unregistered religious activities be removed from the Religious Organizations Law. The registration procedures should be amended so as to be non-discriminatory, especially towards religious minorities. In addition, once registered by the Ministry of Justice in Ashgabat, a religious organization should be entitled to operate on the entire national territory. However, if for formal reasons, regional and local authorities would require registration at their levels, then the registration procedures should not be cumbersome. They should be clear, quick and easy in order to allow branches of religious organizations to operate freely at the regional or local levels.

65. Undue restrictions on religious material, education and attire should also be removed from the Religious Organizations Law. The Special Rapporteur recommends that the Government of Turkmenistan remains neutral on religious matter and does not interfere in religious education. Imams should be allowed to receive religious education in other institutions as well as in the Faculty of History of the Magtymuly Turkmen State University and non-Sunni Muslim religious communities should be allowed to have their own religious training institutions if they so desire. Likewise, the Government should ensure that all religious communities are able to teach members about their beliefs in public or in private. The Special Rapporteur would therefore encourage the Government to revise articles 6 and 9 of the Religious Organizations Law accordingly.

66. The Government should ensure that religious communities incur no obstructions with regard to the building, opening, renting or use of places of worship and that they are not deprived of their places of worship. In cases where such deprivation is justified by lawful reasons and after judicial review, it should provide the religious community concerned with a suitable alternative place of worship. In addition, the Government shall also ensure that religious communities are able to meet in private places of worship without state interference.

67. On the Council on Religious Affairs, although the Special Rapporteur has noticed that its members in Ashgabat have recently adopted a more progressive attitude towards registration of religious minority groups, this change of attitude does not seem to have reached the Council's regional representatives yet. She would like to recommend that the Council on Religious Affairs, both at national and regional levels, change its orientation, so as to become a facilitating rather than monitoring mechanism. In order to do so, it needs to be autonomous and independent in its character. It also needs to be more representative and should, to that effect, include representatives of religious minorities.

68. The Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of "ne bis in idem", as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of each country.

69. The Special Rapporteur urges the Government to initiate reforms in the judiciary, so as to offer effective legal means of redress and compensation for denial of freedom of religion or belief. Moreover,

she recommends that the Supreme Court of Justice of Turkmenistan be entitled to determine whether a law is in conformity or not with the Constitution.

70. Finally, the Special Rapporteur recommends that law enforcement officials and representatives of local authorities are provided with adequate training in order to raise awareness about international human rights standards, including on freedom of religion or belief. Law enforcement officials should cease all activities which result in undue limitations on the freedom to manifest one's religion or belief, such as police raids to prevent religious gatherings or arrests of believers who undertake peaceful missionary activities. In case of abusive implementation of the law by officials, the Government should ensure that those responsible are not granted impunity.

## Ukraine

### Introduction

During the period under review, the Working Group on arbitrary detention visited Ukraine from 22 October to 5 November 2008 (please refer to document A/HRC/10/21/Add.4).

### Conclusions (A/HRC/10/21/Add.4, para.94-97)

94. The Working Group expresses its appreciation to the Government of Ukraine for the invitation and for its cooperation throughout the mission.

95. Institutionally, the Working Group noted a number of areas of cooperation between those Governmental bodies that deal with detention. However, the Working Group also found that there exists a number of overlapping departmental regimes which could be contributing factors to the existence of arbitrary detention. The Working Group noted that with respect to criminal cases the Ministry of Interior including the Militia, as well as specialised authorities such as the State Security Services and the military, and the Department of the Execution of Sentences can deal with detainees during the various phases of the pre-trial period.

96. There were throughout the Working Group's visit to Ukraine consistent references to a lack of confidence in key institutions relating to the protection of an individual's rights. These would in particular include the judiciary; the Militia; the Prosecutor General's Office, and lawyers. While some of this may also relate to very low and indeed unacceptable salaries for these professions as well as high levels of corruption, some also relates to a sense of collusion among individuals to make the principle of pre-trial detention as the norm rather than the exception. Confessions obtained under torture must be addressed by the Government as a matter of priority.

97. Recently, a number of legislative initiatives which have been launched are worthy of support: the revised Criminal Code and efforts to amend the Criminal Procedural Code. These would help reduce the burden on the penitentiary system. Overcrowding of detention facilities would be addressed by reducing sentences for less severe crimes, further exploring the possibility of early releases on probation, or finding alternatives to detention.

### Recommendations (A/HRC/10/21/Add.4, para.98)

98. On the basis of its findings, the Working Group makes the following recommendations to the Government:

Concerning access to detention facilities

(a) Continue to provide free and unfettered access to persons in detention to international, regional and national human rights mechanisms.

Concerning allegations of torture to extract confessions

(b) Establish a National Preventive Mechanism as foreseen by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with the required capabilities, professional knowledge and appropriate resources to enable such a mechanism to

function independently and effectively.

(c) Ensure a policy of zero-tolerance of torture and ensure that any related allegation is promptly and properly investigated and if founded redressed, including compensation. The proposal by the President of Ukraine, made at the opening of the meeting of the National Commission on Reinforcement of Democracy and the Rule of Law, to create an agency to coordinate the State's policy preventing torture is an initiative supported by the Working Group.

(d) Amend the Criminal Procedure Code to the effect that convictions exclusively based on confessions are inadmissible.  
Concerning the Militia

(e) Support the Militia and other enforcement officials in their policies of integrity which may comprise denouncing colleagues for illegal practices, including collusion and corruption, so that they are not arbitrarily detained and justice is served.  
Concerning pre-trial detention

(f) Amend the Code of Criminal Procedure to provide for a maximum time period of pre-trial detention also in the event of a re-trial.  
Concerning the Office of the Prosecutor General

(g) Revisit the dual role of prosecution and oversight of the Prosecutor General's Office and entrust another state authority with either oversight or investigation/prosecution functions in criminal procedures to enhance protection of suspects' and accused rights.

Concerning the judiciary

(h) Provide the legal and operational framework for an independent and effective judiciary including through appropriate recruitment.

(i) Consider providing judges at all levels of the judiciary, who authorise pre-trial detention and other forms of detention and sentence the accused to imprisonment, with increased oversight competences, including the power to conduct unannounced visits to detention facilities.

(j) Cease the practice of appointing a president of a court entitled to distribute cases *ad libitum* to the judges of the court and guarantee that, in any given case, the competent judge who takes decisions related to deprivation of liberty is predetermined by law.

Concerning access to a lawyer and legal aid

(k) Legally enact a nationwide Bar Association with an independent and effective mandate, with enhanced powers, also capable of efficiently holding those lawyers responsible who do not act in the defence of their clients.

(l) Empower the legal profession by taking measures such as raising the daily salary for public defence in criminal cases.

(m) To reserve access to the profession of defence lawyers to advocates following university education and legal clerkship.

(n) Ensure that, in practice, all detainees have recourse to lawyers from the moment of arrest.

Concerning imprisonment

(o) Maintain records and statistical information concerning all stages of a person's detention including temporary releases and disciplinary measures imposed upon prisoners. Provisions should be made that disciplinary measure such as solitary confinement may be challenged before a court not only *ex post facto*.

(p) Introduce, where necessary, i.e. especially in detention facilities under the authority of the State Department for the Execution of Sentences, a system of detention registries which contains all relevant information on the detention of the concerned person to avoid having to consult different files. The guidelines of the Working Group contained in its annual report 2007 (A/HRC/7/4, p. 24 et seq.) could be taken into account.

(q) Consider ceasing the practice of conducting court hearings for early release and trials regarding new crimes committed during the serving of a prison term on prison premises.  
Concerning administrative offences detention

(r) Provide for an effective appeal procedure against administrative sentences which are a form of punishment.

#### Concerning immigration detention

(s) Ensure that delays in the processing of asylum requests do not have a bearing on the length of detention and to prevent unnecessary detention of asylum seekers.  
Concerning detention pending extradition

(t) Legally provide, save for exceptional circumstances, and unless Ukraine has criminal jurisdiction itself, for the mandatory release of a person subjected to an extradition request, who has been granted refugee status because of the situation prevailing in the country of origin, to which an extradition, if carried out, would amount to a violation of the principle of *non-refoulement* and can therefore not be effected.

#### Concerning juvenile justice

(u) Continue with and reinforce its efforts to enact a separate juvenile justice system in compliance with Ukraine's obligations under the Convention on the Rights of the Child and other applicable international human rights norms and standards.  
Concerning monitoring mechanisms

(v) Further strengthen the Office of the Ombudsperson, including by providing it with the necessary financial and human resources to carry out its human rights protection and oversight functions in relation to detention and prevention of, and protection against, torture.  
Concerning deprivation of liberty in general

(w) Legally provide that all persons deprived of their liberty are released as soon as a court has made an order to that effect, even in the event of an appeal by the State of this court order, thereby removing the suspense effect of such appeal.

(x) Provide for legal and institutional guarantees that next-of-kin of persons arrested or detained are always and promptly informed.

## United Kingdom

### Introduction

During 2009, the United Kingdom was visited by two special procedure mandate holders. The Working Group on the use of mercenaries visited the country from 26 to 30 May 2008 (please refer to document A/HRC/10/14/Add.2).

Conclusions and recommendations of the Working Group on the use of mercenaries (A/HRC/10/14/Add.2, para.34-48)

34. Basic arguments raised against the regulation of Private Military and Security Companies (PMSC) by various representatives of various Government agencies were limited to two groups: firstly, a general “methodological” objection to the accumulation of government regulations, especially if these regulations are hardly “enforceable”; and secondly, concerns regarding new costs and increased bureaucracy which might follow the establishment of any new regulatory system. It is important that neither of the arguments were specifically tailored for the regulation of PMSC, but were of general nature.

35. At the same time, the size of the phenomenon in the United Kingdom and the number of cases requiring regulation occurred to be manageable: the development of a system of registration, or licensing, or even regular monitoring of about 40 large and a constellation of smaller companies does not present an irresolvable task for the governmental agencies of the United Kingdom, which have proven that they have the capacity in terms of size and experience to deal with much larger industries.

36. The Working Group regrets that a comprehensive discussion of the issue of regulation of the private military and security companies has only taken place in the United Kingdom to a limited extent, despite the publication of the Green Paper and expression of interest from Government, Parliament and civil society in the last decade. The general interest towards the issue has visibly decreased under the current Government. Basic decisions, even regarding choice between the options for regulation, let alone about implementation of any regulation, have not yet been taken.

37. The Working Group recommends to make public the results of the 2005 review of the United Kingdom Green Paper on the regulation of PMSC, or to undertake a new review, and to conduct a comprehensive discussion between the concerned bodies (FCO, Ministry of Defence, the BERR agency within the Ministry of Industry, inter alia) of the options for regulation, including the potential sharing of responsibilities and functions between national (United Kingdom) and international (United Nations) levels of regulation and sanctions.

38. The Working Group believes that the problem lies in the common perception among United Kingdom authorities that the private military and security industry is similar to any other regular industry, which is perceived not through the prism of security, human rights and conflicts, but rather through the prism of “business as usual”. The Working Group strongly recommends to reassess this perception and pay due attention to the fact that the private military and security industry is a highly specific one, operating by definition in risky and dangerous areas and involved in conflicts; an industry possessing dangerous weapons and skills to employ them, and thus requiring advanced regulatory measures, and attentive and cautious public and political attitudes. The whole issue of PMSC exporting services abroad should be reassessed, along with arms licensing and export control regulations, as far as, aside from exporting security and protection, this sector also exports deadly forces and skills, often into areas of open conflicts.

39. The Working Group believes that the whole system of monitoring and regulating PMSC could be organized through the BERR (Department for Business, Enterprise and Regulatory Reform) along with export control regulations, though the actual design of the system would be decided by the Government at a later stage.

40. In general, in the course of meetings and discussions with various concerned governmental agencies, PMSC themselves and concerned NGOs, the Working Group found that, with very few exceptions, a consensus exists on the main issue that the PMSC industry needs some regulation, and that even basic principles for such regulation as described below might be accepted, with minor variations, by all “stakeholders” (Government, Parliament, companies, international structures, concerned NGOs). Various groups of stakeholders are motivated by different factors. The large PMS companies themselves are supporting basic principles of regulation and are even experimenting with self-regulation because they are interested in more or less clear and publicly recognized criteria differentiating between “white”, “gray” and “black” businesses. Large PMSC are sure that they would be able to meet licensing criteria, and some of them even hope to use regulatory mechanisms as a shield against smaller or not as well organized and connected business rivals. But whatever the motivations are, this creates a “window of acceptability” for the introduction of PMSC regulation here and now.

41. Following meetings with various agencies and companies, the Working Group believes that a set of basic principles can be put in place at national level in the United Kingdom to provide some sort of regulatory framework and mechanisms for the activities of private military and security companies. The Working Group believes that these principles would meet the demands of the various actors involved. These principles could be summarized as follows:

- Specific and detailed registration of PMSC is required, with possible prohibition of offshore registration of such companies
- Registration of PMSC should be based on minimum transparency requirements, supposing regular (possibly annual) reporting of companies to the State bodies on main parameters of their foreign activities, change in structure, contracts over a certain size and other parameters to be defined by the State
- A specific system of State licensing of PMSC and especially of their contracts for operation abroad might be established, similar to arms licensing or export control licensing
- Such licensing might presuppose requirements for obligatory training of personnel on norms of international humanitarian and human rights law, and require the verified absence of national and international criminal record among PMSC employees
- Human rights abuses prevention criteria are to be built into general export criteria for the military and security services industry
- A State system of monitoring of activities and contracts of PMSC might be established through a State inspectorate (possibly similar to BERR compliance officers), including investigations into reported cases of human rights violations committed by the companies or their employees
- In addition to a monitoring mechanism, a complaint mechanism open to individuals, State agencies, foreign Governments and other companies should also be put in place to ensure criminal responsibility of individuals and civil liability on companies
- The State must legally define the types of activities in the military and security area which under no circumstances could be outsourced to PMSC, for example, access to weapons of mass destruction
- National legislation on PMSC should clearly list types of activities prohibited for nationally registered PMSC, including mercenary-related activities banned by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, or participation in overthrowing legitimate Governments and political authorities

42. To move towards the implementation of these principles, the Working Group recommends that the Government consider some concrete steps, listed below.

43. At present, there is no special registration system for private military security companies in the United Kingdom. The registration of PMSC follows the same rules as the registration of any British company. It might be recommended to establish a distinct and open special register for PMSC, which would contain the history record and general data of the companies and allow national and international authorities, as well as the British public, to look for information. Registration is important not per se, but as a tool to motivate companies to raise standards of professionalism, to use only legalized weapons and employ personnel without a criminal record, and to comply with international norms of human rights. The Government should possess full and relevant information on what, where and how British PMSC are doing worldwide.

44. In addition to the specific detailed registration regime, a licensing system might be put in place to establish a permissive regime for foreign activities or contract. It is the FCO (in consultations with other government agencies, if required) or the Ministry of Defence (in consultation with the FCO, in the case of the Ministry of Defence contracting directly with companies) which might decide on a permission to implement a specific contract in a specific country or conflict area under current political circumstances. Only companies that are on the open register could apply for a license to implement a contract on international markets. There are motivated proposals to base a system of licensing on licensing not of companies, but of specific contracts on operating abroad (thus to license the export of military and security services). An enforcement mechanism should be put in place so that companies would have to follow the registration and obligatory transparency procedures, under the risk of not getting a license for foreign contracts or having such a license withdrawn.

45. A monitoring system of oversight of practical activities of PMSC could be put in place. The example of the arms trade, where the FCO and embassies and special agencies of the United Kingdom worldwide are overseeing the legality of the license, could be a good starting point for putting in place such a mechanism. The BERR compliance inspectorate, centrally, and British embassies and High Commissions worldwide could monitor the compliance of the implementation of licensed contracts, in a similar way to what they are mandated to do under the Export Control Act (2002).

46. Finally, oversight of the whole mechanism should be with Parliament, thus providing a political oversight to the process.

47. It is important to note that the concrete configuration of the system of regulation and the distribution of responsibilities between agencies is to be fully decided by the United Kingdom Government. Tasks of registration, licensing, monitoring, etc. could be delegated to existing agencies, or to a new specially created body, or partly delegated to a national association of companies. What is important is to make arrangements for the regulation of PMSC in a systematic way, under a clear policy line approved by the Government. Participation by the United Kingdom Government in the elaboration of the Montreux Document on private military and security companies after the introduction of the Green Paper may be considered as an initial step in this direction.

48. Finally, the Working Group would recommend that the United Kingdom, as a permanent member of the Security Council and one of the two main countries of origin of internationally operating PMSC, might consider to initiate and sponsor, within the United Nations system, the elaboration and adoption of an international instrument on PMSC, so that such a convention would complement national regulations and ensure both clear criteria and permitted limits for the normal operation of that industry and full compliance of PMSC with the norms of international law, especially humanitarian law, and allow for the enjoyment of universally accepted human rights.



## United States of America

### Introduction

During 2009, United States of America was visited by two special procedure mandate holders. The Special Rapporteur on extrajudicial, summary or arbitrary executions visited from 16-30 June 2008 (please refer to document A/HRC/11/2/Add.5). The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the country from 19 May to 6 June 2008 (please refer to document A/HRC/11/36/Add.3).

Conclusions and recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2/Add.5, para.74-83)

#### *A. Domestic issues*

##### 74. Due process in death penalty cases

- The system of partisan elections for judges should be reformed to ensure that capital defendants receive a fair trial and appeals process.
- Alabama and Texas should establish well-funded, state-wide public defender services. Oversight of these should be independent of the executive and judicial branches.
- Texas should establish a commission to review cases in which convicted people have been subsequently exonerated, analyze the reasons, and make recommendations to enable the criminal justice system to prevent future mistakes.
- Alabama should evaluate and respond in detail to the findings and recommendations of the American Bar Association report on the implementation of its death penalty.
- Federal and state governments should systematically review and respond to concerns about continuing racial disparities in the criminal justice system generally, and in the imposition of the death penalty specifically.
- In light of uncorrected flaws in state criminal justice systems, and given the finality of executions, Congress should enact legislation permitting federal courts to review on the merits all issues in death penalty post-conviction cases.
- Regulations permitting the Department of Justice to certify the adequacy of state indigent defense systems based on factors left to states' discretion should be amended or repealed.
- Federal and state governments should ensure that capital punishment is imposed only for the most serious crimes, requiring an intent to kill resulting in a loss of life.
- Foreign nationals who were denied the right to consular notification should have their executions stayed and their cases fully reviewed and reconsidered.

##### 75. Deaths in immigration detention

- All deaths in immigration detention should be promptly and publicly reported and investigated.
- The Department of Homeland Security should promulgate regulations, through the normal administrative rulemaking process, for provision of medical care that are consistent with international standards.

##### 76. Tracking and responding to killings by law enforcement officials

- Video and audio recording of interactions between law enforcement officers and members of the public should be increased. The destruction of tapes should be minimized through technical means and through the imposition of penalties.
- Existing data collection efforts regarding killings by law enforcement officers should be improved to increase their usefulness in an “early warning” and “hot spot identification” role.

77. Guantánamo Bay detainees

- The Military Commissions Act should not be used for capital prosecutions of any detainees, including those in Guantánamo. Any such prosecutions should meet due process requirements under international human rights and humanitarian law.
- Complete and unedited investigations and autopsy results into the deaths of Guantánamo detainees should be released to family members.

*B. International operations*

78. Transparency into civilian casualties

- The Government should track and publicly disclose all civilian casualties caused by military or other operations or that occur in the custody of the Government or its agents.

79. Enhancing military justice transparency

- The Department of Defense should establish a central office or “registry” to maintain a docket and track cases from investigation through final disposition. The system should be capable of providing up-to-date statistical information. The registry should include information on upcoming hearings and copies of the findings of formal and informal investigations, rulings, pleadings, transcripts of testimony, and exhibits. Public internet access to the registry should be available, subject only to legal non-disclosure requirements related to national security and individual privacy.

80. Ensuring comprehensive criminal jurisdiction over offences in armed conflict

- The doctrine of “command responsibility” as a basis for criminal liability should be codified in the Uniform Code of Military Justice and the War Crimes Act.
- Congress should adopt legislation that comprehensively provides criminal jurisdiction over all private contractors and civilian employees, including those working for intelligence agencies.

81. Ensuring accountability

- A commission of inquiry should be established to conduct an independent, systematic and sustained investigation of policies and practices that led to deaths and other abuses in U.S. operations. The commission should have the mandate and resources to conduct a full investigation. Its results and recommendations should be publicly and widely disseminated, and the Government should publicly respond thereto. Given the importance of prosecutions, an independent special prosecutor should be considered and the commission should not undermine the possibility of eventual prosecution.
- Consideration should be given to establishing a Director of Military Prosecutions to ensure separation between the chain of command and the prosecution function.
- An office dedicated to investigation and prosecution of crimes by private contractors, civilian Government employees, and former military personnel should be established within the DOJ. The office should receive the resources and investigative support necessary to handle these cases. The DOJ should make public statistical information on the status of these cases, disaggregated by the kind, year, and country of alleged offence.

82. Enhancing reparations programs

- Existing reparation programs should be combined or replaced by a comprehensive and adequately-funded compensation program for the families of those killed in U.S. operations, including by military and intelligence personnel and private contractors. In missions involving a range of international forces, such as those in Afghanistan and Iraq, the Government should urge allies to implement similar programs and should promote coordination to ensure that all casualties are compensated.

83. Enhancing transparency in targeted killings

- The Government should explicate the rules of international law it considers to cover targeted killings. It should specify the bases for decisions to kill rather than capture particular individuals, and whether the State in which the killing takes place has given consent. It should specify the procedural safeguards in place, if any, to ensure in advance of drone killings that they comply with international law, and the measures the Government takes after any such killing to ensure that its legal and factual analysis was accurate and, if not, the remedial measures it would take.
- The Government should make public the number of civilians collaterally killed as a result of drone attacks, and the measures in place to prevent such casualties.

**Conclusions and recommendations** of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/11/36/Add.3, para.97-110)

97. Congress should establish a bipartisan Commission to evaluate the progress and failures in the fight against racism and the ongoing process of re-segregation, particularly in housing and education, and to find responses to check these trends. In this process, broad participation from civil society should be ensured.

98. The Government should reassess existing legislation on racism, racial discrimination, xenophobia and related intolerance in view of two main guidelines: addressing the overlapping nature of poverty and race or ethnicity; and linking the fight against racism to the construction of a democratic, egalitarian and interactive multiculturalism, in order to strengthen inter-community relations.

99. The Federal Government, in particular the Civil Rights Division of the Department of Justice, the Equal Employment Opportunities Commission and the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development should intensify their efforts to enforce federal civil rights laws in their respective domains.

100. Since the fight against racism needs to take place at the federal, state and local levels of government, the Special Rapporteur recommends that adequate consultation mechanisms be put in place for a coordinated approach at all levels of Government.

101. As a matter of urgency, the Government should clarify to law enforcement officials the obligation of equal treatment and, in particular, the prohibition of racial profiling. This process would benefit from the adoption by Congress of the End Racial Profiling Act. State Governments should also adopt comprehensive legislation prohibiting racial profiling.

102. To monitor trends regarding racial profiling and treatment of minorities by law enforcement, federal, state and local governments should collect and publicize data about police stops and searches as well as instances of police abuse. Independent oversight bodies should be established within police agencies, with real authority to investigate complaints of human rights violations in general and racism in particular. Adequate resources should also be provided to train police and other law enforcement officials.

103. Mandatory minimum sentences should be reviewed to assess disproportionate impact on racial or ethnic minorities. In particular, the different minimum sentences for crack and powder cocaine should be reassessed.

104. In order to diminish the impact of socio-economic marginalization of minorities in what concerns their access to justice, the Government should improve, including with adequate funding, the state of public defenders.
105. The Special Rapporteur recommends that complementary legislation be considered to further clarify the responsibility of law enforcement and criminal justice officials not only to protect human rights, but as key agents in the fight against racism.
106. In view of the recent recommendations by the Human Rights Committee,<sup>39</sup> the Committee Against Torture<sup>40</sup> and the Committee on the Elimination of Racial Discrimination,<sup>41</sup> and considering that the use of life imprisonment without parole against young offenders, including children, has had a disproportionate impact for racial minorities, federal and state governments should discontinue this practice against persons under the age of eighteen at the time the offence was committed.
107. The Government should intensify funding for testing programs and “pattern and practice” investigations to assess discrimination, particularly in the areas of housing and employment. Robust enforcement actions should be taken whenever civil rights violations are found.
108. The Department of Education, in partnership with state and local agencies, should conduct an impact assessment of disciplinary measures in public schools, including the criminalization of school misbehaviour, and revisit those measures that are disproportionately affecting racial or ethnic minorities.
109. Special measures to promote the integration of students in public schools as well as to reduce the achievement gap between white and minority students should be developed, in accordance with article 2, paragraph 2, of ICERD.
110. The Federal Government and the States of Louisiana, Alabama and Mississippi should increase its assistance to the persons displaced by Hurricane Katrina, particularly in the realm of housing. The principle that “competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence”<sup>42</sup> should be respected.

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<sup>39</sup> CCPR/C/USA/CO/3/Rev.1, para. 34.

<sup>40</sup> CAT/C/USA/CO/2, para. 34.

<sup>41</sup> CERD/C/USA/CO/6, para. 21.

<sup>42</sup> Principle 28 of the United Nations Guiding Principles on Internal Displacement.

## ANNEX I

### ANNUAL REPORTS

#### Conclusions and recommendations of the Special Rapporteur on the right to adequate housing and to non-discrimination in this context

##### A/HRC/10/7

74. The Special Rapporteur fears, in view of the preceding information and analysis (please see the full report), that the financial crisis will continue to cause many internal and international economic and financial problems, including additional bankruptcies and impact on the housing sectors affected by the financial investment industries.
75. The Special Rapporteur believes that the current crisis represents also an opportunity for reflection and to consider how to improve housing systems, policies and programmes so as to ensure adequate housing for all. She hopes that the Human Rights Council will consider the issues raised in the present report.
76. Further consideration of the distinction between property rights and the right to adequate housing, which encompass common and separate features, may prove useful in helping the Council consider how enjoyment of the right to adequate housing could be further improved.
77. The challenges posed by the crisis - and the range of issues raised in this report - will require further analysis and the Special Rapporteur will continue to monitor the situation. However, she would like to offer some preliminary recommendations for the consideration of the Human Rights Council.
78. All actors involved in the housing sector should fully recognize the multiple dimensions of housing, which is much more than a mere financial asset and has great implications for the individual, the community and society as a whole.
79. The right to adequate housing should be fully integrated into all policies, projects and activities concerning housing, in particular those designed by public authorities. All public and private actors involved in housing need to acknowledge the right to adequate housing and take it into account in their work.
80. States must ensure coherence in decision-making - both nationally and internationally, and at all levels and for all relevant public agencies and actors. State activities should aim to improve the enjoyment of human rights and adequate housing. For instance, decisions taken by the Human Rights Council on adequate housing should be acknowledged, coordinated with and supported by those adopted at UN-Habitat or by international financial institutions.
81. State action should reflect acknowledgement that the value of housing is not only linked to the personal investment of a household but also depends on a large number of external factors, including public investments in infrastructure, the basic services connected to it, and the environment, community, and security housing is associated with, ensuring society has both a role to play and a legitimate stake in the value of housing, which requires appropriate regulation.
82. The global economic crisis, and even recession in many countries, may result in a reduction in income for some sectors of the population, thus making affordable housing even more necessary. Therefore States should take promptly all measures needed to increase the availability of adequate housing options.
83. States should support access to adequate housing by measures such as promoting alternatives to private mortgage and ownership-based housing systems, and develop new financial mechanisms that can

ensure the improvement of the living and housing conditions for the majority of the world's population, which has not been well served by existing mechanisms. They should not reduce State expenditure on housing. On the contrary, public funding for housing and construction of public housing will need to increase in order to address the impact of the crisis on the most vulnerable.

84. In some countries, homeownership has been traditionally seen as the safest form of tenure and rental tenure has been less secure, with a greater potential for eviction. Recent events clearly show that homeownership is a secure form of tenure only under certain circumstances, in particular when there are adequate, sustainable and stable financial means to achieve it. Rental tenure could be made more secure with appropriate legislation to protect tenants against abusive evictions, as well as to expand access to affordable, controlled and subsidized rent mechanisms.

85. States must ensure that financial institutions and regulation take account of the vulnerabilities and limited repayment capacities of low-income households. Financial services for low-income groups must be developed in consultation with these groups, as they are best able to assess their repayment capacity and ensure the development of systems that effectively meet their needs.

86. States must acknowledge that markets alone are unable to achieve adequate housing for all. Effective regulation and close monitoring by the State of private sector activities, including financial and building companies, is required.

87. In some situations, States should consider intervening in the market, for instance through equitable land-use policies, public financing and housing provision, appropriate rent regulation and reinforcement of legal security of tenure. Enshrining in relevant legislation the right to adequate housing will help in ensuring an appropriate role for the State in the housing sector.

88. States should take mitigating measures to lessen the impact of foreclosures and the crisis, for instance in cases of tenant eviction due to foreclosure or because of unpaid rents due to the economic crisis. In particular, States should make every effort to prevent homelessness which pushes households into inadequate housing and has a detrimental impact on the enjoyment of other human rights by individuals, families and communities, including their access to education, work and an adequate standard of living.

89. States should ensure appropriate regulation of international financial activities in order to avoid future financial crises and their subsequent effect on human rights and adequate housing.

90. States should adopt internal and international measures to control speculation in housing and mortgages. They should, in particular, protect the housing rights of the population by putting in place monitoring mechanisms aimed at regulating the activities of private companies - prohibiting predatory lending, mobbing, discriminatory credit practices, etc. - that result in the denial of the right to adequate housing.

91. Economic hardship risks causing a wave of disinvestment in housing, yet it is crucial both for social and economic reasons, that massive investment in housing take place instead. States must react as promptly and efficiently as they did to intervene in the international financial system to address the housing crisis worldwide, so as to implement their obligation to protect the right to adequate housing for all.

### **Conclusions and recommendations of the Working Group on Arbitrary Detention**

#### **A/HRC/10/21**

71. The Working Group, in the fulfilment of its mandate, welcomes the cooperation it has received from States, with regard to the responses by the Governments concerned concerning cases brought to their attention. During 2008, the Working Group adopted 46 Opinions concerning 183 persons in 22 countries.

72. The Working Group welcomes the invitations extended to it as well as the cooperation on the part of Governments. The Working Group conducted four official visits in 2008, to Colombia, Italy, Mauritania and Ukraine. Among all the requested country visits, the Working Group has received invitations by the Governments of Malta, Senegal and the United States of America. The Working Group reiterates its belief that its country visits are essential in fulfilling its mandate. For Governments, these visits provide an excellent opportunity to show developments and progress in detainees' rights and the respect for human rights, including the crucial right not to be arbitrarily deprived of liberty. Further to this, the Working Group considers that future visits and follow-up visits are of utmost importance.

73. The Working Group considers the question of detention in the context of counter-terrorism. As such, the Working Group considers it necessary to reiterate the prominent concern that, in the counter-terrorism context, some States continue to use deprivation of liberty without charges or trial or other applicable procedural guarantees against persons accused of terrorist acts; a practice the Group considers as contrary to international human rights instruments. Specifically, the Working Group considers that detained persons suspected of terrorist activities and/or acts shall be immediately informed of such charges in line with relevant national legislation; they shall be brought before a competent judicial authority; and they shall enjoy the effective right to habeas corpus. The Working Group deems it appropriate to put forward a list of principles in conformity with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, which may be used in the context of measures countering terrorism.

74. The Working Group considers that, among other factors, corruption is detrimental to the rule of law and on the effective fulfilment of human rights, including the right to be free from arbitrary detention.

75. The Working Group feels bound to reiterate that detention shall be the last resort and permissible only for the shortest period of time, and that alternatives to detention shall be sought whenever possible, all of which particularly concern the deprivation of liberty applied to asylum-seekers, refugees and irregular migrants. Furthermore, the Working Group feels that immigrants in irregular situations should not be qualified or treated as criminals and viewed only from the perspective of national security.

76. Finally, the Working Group considers it most useful to reiterate its concern over the deprivation of liberty imposed arbitrarily, and that a still important number of persons are frequently unable to benefit from legal resources and guarantees to which they are entitled for the conduct of their defence by law and by applicable human rights instruments.

## V. RECOMMENDATIONS

77. The Working Group requests the Human Rights Council to adopt a resolution or decision to provide additional funds for the Working Group to enable it to conduct at least five country visits per year and relevant follow-up visits. This would put the Working Group in a position to best use its potential as a group of five members and to discharge its mandate more effectively.

78. The Working Group proposes to the Human Rights Council to expand the mandate of the Working Group so as to include the monitoring of State compliance with their obligations concerning all human rights of detained and imprisoned persons. The mandates of the Special Rapporteur on prisons and conditions of detention in Africa of the African Commission on Human and Peoples' Rights as well as of the Rapporteurship on the rights of persons deprived of liberty of the Inter-American Commission on Human Rights might provide some guidance as to the scope of such extended mandate.

79. The Working Group proposes that the Human Rights Council consider organizing a special forum, to deliberate and work on common positions necessary to guarantee the respect for the right to be free from arbitrary detention in the counter-terrorism context. This special forum should give special consideration to the methods and framework applied by States, particularly in perceived emergency situations and will call for the participation of representatives of all relevant special procedures and treaty bodies.

80. The Working Group recommends to States to take duly into account the principles contained in the present report with respect to deprivation of liberty in the context of measures countering terrorism and review their legislation and practice in the light of these principles.

81. The Working Group calls on those States which have not yet become a party to the United Nations Convention against Corruption to ratify, accept, approve or accede to it. It further calls on all States to study the set of measures contained in this Convention for the prevention and prosecution of corrupt practices and to seek the implementation of those measures most suitable and adequate for their efforts in combating arbitrary detention.

82. With regard to detention of immigrants in an irregular situation the Working Group reminds States that detention should be the last resort, and is permissible only for the shortest period of time. Alternatives to detention must be sought whenever possible. Grounds for detention must be clearly and exhaustively defined and the legality of detention must be open for challenge before a court and regular review within fixed time limits. Provisions should always be made to render detention unlawful if the obstacle for identifying immigrants in an irregular situation or carrying out removal from the territory does not lie within their sphere, for example, when the consular representation of the country of origin does not cooperate or legal considerations - such as the principle of non-refoulement barring removal if there is a risk of torture or arbitrary detention in the country of destination - or factual obstacles, such as the unavailability of means of transportation - render expulsion impossible.

83. Finally, the Working Group requests States and other stakeholders to provide the Group with information and share their experiences regarding the installation of video and/or audio (recording) equipment in rooms where interrogations related to criminal investigations are conducted. The Working Group has taken note of a seemingly recent tendency of international and regional human rights bodies recommending to States the implementation of such measures to prevent the extraction of confessions under torture or other forms of ill-treatment and their admission as evidence in criminal trials. It considers that the issue warrants further study.

### Conclusions and recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography

#### A/HRC/12/23

122. Despite the many actions undertaken and a measure of success, further progress must be made with a view to identifying more children, protecting children better and fully guaranteeing their rights.

123. To that end, child pornography must, first and foremost, be declared a crime and a grave violation of children's rights that seriously affects their dignity and physical and psychological integrity.

124. In order to prevent and eradicate child pornography and prevent the Internet and new technologies from being used for the production and dissemination of child pornography and solicitation of children for sexual purposes both online and offline, the Special Rapporteur recommends:

(a) Ratification by States that have not yet done so of the regional and international instruments dealing with child pornography, in particular the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

(b) Adoption of clear and comprehensive domestic legislation that guarantees respect for children's rights and protects them from the crime of sexual exploitation on the Internet. Such legislation should:

(i) Define, prohibit and criminalize child pornography on the Internet, in accordance with international human rights instruments, defining a minor as a human being under the age of 18;



- (ii) Stipulate that a minor can never be considered to be in a position to consent to participation in sexual exploitation, including pornographic activities;
  - (iii) Criminalize the production, distribution, intentional receipt and possession of child pornography, including virtual images and representations that exploit children, as well as the acts of intentionally using, accessing and watching such material even in the absence of any physical contact with the child;
  - (iv) Criminalize solicitation of children on the Internet for sexual purposes (“grooming”);
  - (v) Require Internet service providers (ISPs), mobile telephone operators, search engines and other stakeholders to report any violations to the police; block access to the sites; keep records, in accordance with established standards, for the purpose of investigation and prosecution before the courts;
  - (vi) Require financial institutions to report, block and impede the functioning of the financial mechanisms that provide a foundation for child pornography sites;
  - (vii) Oblige all ISPs to block access to sites that contain images of children being sexually exploited, in order to protect the privacy of victims;
  - (viii) Ensure that child victims of sexual exploitation are not considered to be criminals or punished for acts directly linked to their exploitation, but are deemed, rather, to be victims of human rights violations receive appropriate care;
  - (ix) Establish extraterritorial jurisdiction for all cases of sexual exploitation of children and adolescents and abolish the principle of double jeopardy, facilitate mutual legal assistance with a view to guaranteeing the effective prosecution of such crimes and the imposition of appropriate penalties, and consider all acts involving sexual exploitation of children and adolescents to be covered in existing and subsequent extradition treaties;
- (c) The identification and protection of victims as well as provision of assistance and care by specialized personnel, which should be assigned high priority. That involves:
- (i) Training professionals to spot child victims of sexual predators more effectively and rapidly by providing them with access to the necessary information (name, address and encrypted or password-protected data) and by making available the expertise and resources they need to develop more effective methods of image analysis;
  - (ii) Providing a framework for and encouraging the collection and exchange of information and cross-border communication and adding to the database on victims and perpetrators with a view to more effective action to help children;
  - (iii) Promoting public/private partnerships for research into and development of technologies that will facilitate investigations and the identification of victims, in order to put an immediate end to exploitation and provide victims with the assistance they need for a full recovery;
  - (iv) Promoting and defending the right to privacy of child victims and child perpetrators of sexual exploitation, taking into account existing domestic laws and judicial procedures, in order to protect their identity at all stages of investigations and judicial procedures; preventing the public dissemination of information that could help identify them; and ensuring that the measures taken are appropriate for the children and facilitate their participation in the entire judicial process;

- (v) Allocating the resources and expertise needed to assist victims and their families and to care for them until such time as the child has fully recovered;
  - (vi) Putting an end to the circulation of images of child sexual exploitation in order to spare victims any further humiliation, by maintaining a worldwide list of Internet sites containing images of sexual abuse of children, constantly updated and available to States. The list will enable police services and ISPs to block access to the sites in question;
- (d) Broader and more effective social responsibility on the part of the private sector. In that respect ISPs, mobile telephone operators, Internet cafes, financial institutions and other stakeholders should:
- (i) Work out and implement voluntary codes of conduct;
  - (ii) Support and develop measures for preventing not only the production and dissemination of child pornography, including visual images and depictions of children of an exploitative nature, but also the use of the Internet and other information technologies for online or offline “grooming” of children;
  - (iii) Undertake actions to detect and dismantle the financial mechanisms used to conclude transactions for the purpose of sexual exploitation of children;
  - (iv) Support efforts aimed at eliminating demand and improve assistance to child victims and their families, in particular by means of telephone hotlines or Internet services;
  - (v) Support the development of education and awareness campaigns for children, parents, educators, youth associations, and associations that work with and for children, focusing on the risks of sexual exploitation and the use of the Internet, mobile telephones and new technologies for exploitation, and self-protection measure,
- (e) Improved prevention, which calls for:
- (i) Evaluating the prevention programmes undertaken to date, with a view to measuring their effect;
  - (ii) Organizing education and awareness campaigns for children, parents, teachers, youth associations and other persons working with and for children, with a view to increasing their knowledge about the risk of sexual exploitation associated with use of the Internet, mobile telephones and other new technologies. Such campaigns should devote particular attention to how children can protect themselves, receive help and report online child pornography and sexual exploitation;
  - (iii) Establishing partnerships with the media to develop audio-visual programmes for children, families and the public, aimed at increasing their awareness of and keeping them informed about the risks associated with Internet use by children;
  - (iv) Make technologies accessible, affordable and user-friendly to parents, guardians and educators, especially filters to block images of children that could be inappropriate or harmful;
- (f) Increased participation by children, which requires:
- (i) Keeping children informed and teaching them how to protect themselves, seek help and report sites and “grooming”;
  - (ii) Promoting the participation of children and young people at all stages of the development, follow-up to and evaluation of policies and programmes; in campaigns; and through

assistance programmes by and for children, aimed at increasing awareness of and preventing online child pornography;

(iii) Considering the establishment of a fund for initiatives on the part of children and young people in this area;

(g) Increased international cooperation because the absence of borders between countries on the Internet requires effective and efficient cooperation to protect children everywhere, which calls for:

(i) Harmonizing practices and procedures in the areas of information, access to and exchange of information, storing of computer data, regulation of the public-private partnership between services responsible for applying the law and ISPs, and training and content methods;

(ii) Developing interdisciplinary and multi-country working groups;

(iii) Establishing an international mechanism for reporting Internet-related offences;

(iv) Providing economic, technical or other assistance through existing multilateral, regional and bilateral programmes aimed at combating online child pornography in the developing countries;

(v) Broadening the scope of activities to prevent and combat child pornography, currently concentrated mostly in the countries of the North, to include the countries of the South, thereby making them accessible to all children, wherever they may be;

(vi) Capitalizing and dissemination of practices and tools within countries and among all countries;

(vii) Conclusion of multilateral agreements, especially on police investigations;

(viii) Adoption of coordinated action at the national and international levels to combat criminal organizations involved in sexual exploitation of children and to ensure the prosecution of all individuals and/or legal persons involved in this form of organized crime.

### Conclusions and recommendations of the Working Group on Enforced or Involuntary Disappearances

A/HRC/13/31

#### **Areas of concern, conclusions and recommendations**

642. In 2009, the Working Group transmitted 456 newly-reported cases of disappearance to 25 Governments, 54 of which allegedly occurred during 2009. The Working Group used the urgent action procedure in 60 of these cases, which allegedly occurred within the three months preceding the receipt of the report by the Working Group. During the reporting period, the Working Group was able to clarify 36 cases of disappearance.

643. The Working Group is grateful for the cooperation received from a number of Governments. Nevertheless, it remains concerned that of the 82 States with outstanding cases, some Governments have never replied to the Working Group's communications. Some Governments provide responses that do not contain relevant information. The Working Group urges those Governments to fulfil their obligations under the Declaration and the resolutions of the General Assembly and the Commission on Human Rights

and its successor, the Human Rights Council. The cooperation of States is indispensable for discovering the fate or whereabouts of disappeared persons around the globe.

644. The Working Group acknowledges the efforts of States, many human rights defenders, non-governmental organizations, lawyers and others who untiringly work to know the fate or whereabouts of disappeared persons in very adverse circumstances in all parts of the world and reiterates its solidarity with the victims of enforced disappearance and their families.

645. The Working Group continues to express its concern over the growing number of cases of enforced disappearances around the world.

646. The Working Group continues to be concerned about measures being taken while addressing terrorism and its implications for enforced disappearances. These include the enactment of legislation that restricts personal freedoms and weakens due process, random arrests committed during military operations, arbitrary detentions and extraordinary renditions, which amount to enforced disappearances. The Working Group calls upon States to take legislative, judicial and administrative or other measures to deal with this issue. The Working Group would like to reiterate its general comment on article 10 of the Declaration which states that “under no circumstances, including states of war or public emergency, can any State interests be invoked to justify or legitimize secret centres or places of detention which, by definition, would violate the Declaration, without exception”.

647. The Working Group is concerned that in many instances the military forces are allegedly responsible for many cases of enforced disappearance.

648. The Working Group reminds States that enforced disappearance is a continuing offence and a continuous human rights violation for as long as the fate or whereabouts of the victim remains unclarified. States therefore should bear this in mind when enacting statutes of limitation.

649. The Working Group calls upon States to take specific legislative, administrative, judicial or other measures to prevent and eradicate enforced disappearances. States should also take specific measures under their criminal law to define enforced disappearances as an autonomous criminal offence and to bring their existing legislation in line with the Declaration.

650. The Working Group notes that in certain parts of the world impunity for enforced disappearance remains a problem. For this reason, the Working Group reminds States of their obligations under the Declaration to prevent impunity by taking lawful and appropriate steps to bring to justice those alleged to have committed enforced disappearances. The Working Group calls upon States to prosecute individuals who have committed enforced disappearances by competent ordinary courts at all stages of the legal process.

651. In the general comment that it adopted this year, the Working Group recognized “that the definition given by Article 7(1) of the Statute of the International Criminal Court now reflects customary international law and can thus be used to interpret and apply the provisions of the Declaration”. It calls on States, competent international organizations and tribunals to fully acknowledge this conclusion and draw all the legal consequences flowing from it.

652. The Working Group would like to emphasize the right to truth, which should be enjoyed by all victims of enforced disappearance. The Working Group recommends that States adopt measures to promote truth and reconciliation in their societies, as a means of implementing the right to truth and the right to integral reparation of victims of enforced disappearances. Based on its experience, the Working Group acknowledges that such processes are often crucial to prevent repetition of enforced disappearances and to clarify cases, by uncovering the truth of the fate or the whereabouts of disappeared persons. However, the Working Group underlines that reconciliation between the State and the victims of enforced disappearance cannot happen without the clarification of each individual case. The Working Group also stresses that measures taken to promote reconciliation should not be used as a substitute for bringing perpetrators to justice, in accordance with the principles provided for in the general comment on article 18.

653. The Working Group also reminds States of its general comment referring to article 19 of the Declaration, which states that “in addition to the punishment of the perpetrators and the rights to monetary compensation, the right to obtain redress for acts of enforced disappearance under article 19 of the Declaration also includes the ‘means for as complete a rehabilitation as possible’”.

654. The Working Group notes a pattern of threats, intimidation and reprisals against victims of enforced disappearances, including family members, witnesses and human rights defenders working on such cases and calls upon States to take specific measures to prevent such acts, punish the perpetrators and protect those working on enforced disappearances.

655. As it is men who are usually the direct victims of enforced disappearances, it is the wives, mothers and children who often bear the consequences of the enforced disappearances and who are the persons most affected. The Working Group calls upon States to provide sufficient support to those affected by enforced disappearances. For this reason, the Working Group intends to explore and study the effect of enforced disappearances on women and children.

656. Country visits are an integral part of the fulfilment of the Working Group’s mandate, as they allow the Working Group to highlight country practices in addressing enforced disappearances, to assist States in reducing obstacles to the implementation of the Declaration, and to ensure access to those family members who might not be able to attend the Working Group’s sessions in Geneva. The Working Group would like to thank the Governments that have extended invitations to visit their countries or have hosted the Working Group’s sessions. However, because informal confirmations and even standing invitations are not sufficient, the Working Group invites all the Governments that received a request by the Working Group for a visit to respond with specific dates as soon as possible.

657. The Working Group notes with satisfaction that, as of November 2009, 81 States have signed and 16 States have ratified the International Convention for the Protection of all Persons from Enforced Disappearance. It reiterates that the Convention’s entry into force will help strengthen the capacities of States to reduce the number of disappearances. The Convention will bolster the hopes and the demands for justice and truth by victims and their families. The Working Group once again calls upon Governments that have not signed and/or ratified the Convention to do so as soon as possible so that the Convention can enter into force in the near future. It also calls upon States, when ratifying the Convention, to accept the competence of the Committee to receive individual cases, under article 31, and inter-State complaints under article 32 of the Convention.

658. Noting that the Working Group celebrates its thirtieth anniversary in 2010, it believes that the International Day of the Disappeared, traditionally observed by civil society on 30 August, ought to be commemorated by the United Nations and by all people around the world. Therefore the Working Group calls upon the United Nations to proclaim 30 August United Nations International Day of the Disappeared, with a view to the eradication of enforced disappearances.

659. In the past two years, the Working Group has more than doubled its volume of work both in terms of number of cases processed and the number of communications sent to the Governments while having its staff reduced in 2009. Should the Working Group want to keep its present level of capacity to handle cases, not increase the small backlog that it presently has, continue the fruitful dialogue with Governments, and deal with a specific range of issues like women and children, it will clearly need more support. The Working Group calls upon the United Nations to secure additional appropriate resources and an increase in the level of staffing.

## Conclusions and recommendations of the Special Rapporteur on the right to education

### A/HRC/11/8

89. The Special Rapporteur thanks all States that responded. As noted above, international and comparative prison research, learning and cooperation have become even more imperative. By contributing to the present global report, those States have responded in part to this need. For those who have not been able to contribute, the Special Rapporteur makes a further and specific request that they do so for future reports. If the “snapshots” provided by the responses to the questionnaire are a reflection of the actual state of education in detention, States individually, in regions and globally must come together with the shared aim of fulfilling the right to education for persons in detention to a greater extent than now seems to be the case.
90. To this end, the Special Rapporteur addresses the following recommendations to States:
- (a) Education for people in detention should be guaranteed and entrenched in Constitutional and/or other legislative instruments;
  - (b) The provision of education for persons in detention should be adequately resourced from public funds;
  - (c) Compliance with the standards set forth in international law and guidance pertaining to education in detention should be ensured.
91. The Special Rapporteur recommends that authorities in charge of public education:
- (a) Make available to all detainees, whether sentenced or in remand, education programmes that would cover at least the curriculum of compulsory education at the primary and, if possible, at the secondary level also;
  - (b) Together with the institutions of detention, arrange comprehensive education programmes aimed at the development of the full potential of each detainee. These should aim also to minimize the negative impact of incarceration, improve prospects of reintegration, rehabilitation, self-esteem and morale.
92. Systematic and appropriate screening of all prisoners upon entry to places of detention becomes the norm. Individual education plans with full participation of the detainee should result from this screening, and be monitored, evaluated and updated from entry to release.
93. States should identify the dispositional barriers to education and subsequently ensure adequate assistance and resources to meet their challenge.
94. Education programmes should be integrated with the public system so as to allow for continuation of education upon release.
95. Detention institutions should maintain well-funded and accessible libraries, stocked with an adequate and appropriate range of resources and technology available for all categories of detainees.
96. Teachers in places of detention should be offered approved training and ongoing professional development, a safe working environment and appropriate recognition in terms of working conditions and remuneration.
97. Evaluation and monitoring of all education programmes in detention should become the norm and a responsibility of the ministry of education. The Special Rapporteur encourages States to investigate which practices pervade their prison estates, recognize them and take prompt steps to address them.
98. Education programmes in detention should be based on current, multidisciplinary and detailed research. To this end, the international community should establish cooperation and exchange mechanisms between States to facilitate the sharing of such research and examples of best practice and their implementation.

99. The diverse background and needs of persons in detention and how that diversity is reflected in programmes and curriculum offered is also an area where the sharing of research, best practice and experience would generate particular dividends and is therefore specifically and strongly encouraged.

100. The production and delivery of adequate pedagogical material with the necessary and active participation of all persons in detention, and more specifically those from marginalized groups, should also be encouraged.

101. Furthermore, the Special Rapporteur makes the following recommendations specifically regarding children and women in detention and other marginalized groups:

(a) Special attention must be given to ensuring that all children subject to compulsory education have access to, and participate in, such education;

(b) Curricula and educational practices in places of detention must be gender sensitive, in order to fulfil the right to education of women and girls;

(c) Attention should be also given to persons from traditionally marginalized groups, including women, minority and indigenous groups, those of foreign origin and persons with physical, learning and psychosocial disabilities. Education programmes for such groups should pay close attention to accessibility and relevance to individual needs; the barriers to continued education upon release should also be addressed and taken care of properly.

102. Finally, the Special Rapporteur considers that deprivation of liberty should be a measure of last resort. Given the considerable negative long-term economic, social and psychological consequences of detention for detainees, their families and the community alike, the Special Rapporteur urges considerably greater attention be paid to identifying and implementing alternatives to detention for children and adults alike, and reiterates that people sentenced to prison are still entitled to their inherent human rights, including their right to education.

### Conclusions and recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions

#### A/HRC/11/2

##### ***A. Reprisals against persons cooperating with special procedures***

66. Intimidation of, or retaliation against, those cooperating with special procedures mandate holders is a problem that threatens the very foundations of the Council's work in protecting human rights. Urgent measures are needed to respond to any such reported incidents. The following steps should be taken:

(a) The Council should urge Governments, United Nations field presences and special procedures mandate holders to give particular attention to the protection of persons who have cooperated with a mandate holder;

(b) Given the need to be able to respond promptly and meaningfully to any reports of serious or continuing harassment, the Council should define appropriate mechanisms to make representations to the Government concerned in a timely and effective manner and to monitor situations;

(c) Civil society organizations and States through their diplomatic missions should continue to enhance arrangements to provide financial and other assistance to individuals who are at risk, including, where necessary, providing assistance in relocation to a secure place;

(d) The Coordination Committee for Special Procedures should pursue this issue following an exchange of views among mandate holders at their annual meeting.

##### ***B. Execution of juvenile offenders***

67. The prohibition on executing juvenile offenders is a clear and very important violation of international human rights standards. It is being openly and systematically flouted in one Member State, in violation of that State's treaty obligations. In its resolution 10/2, the Council urged all States to ensure that

the practice was eliminated and requested special procedures mandate holders to make specific recommendations in this regard, including proposals for advisory services and technical assistance measures. The President of the Council should designate a member of the Council Bureau to seek to visit the Islamic Republic of Iran to engage in consultations with all stakeholders with a view to identifying appropriate measures that can be taken to bring an immediate halt to the sentencing and execution of juvenile offenders.

### ***C. The killing of witches***

68. The Council should acknowledge that it is entirely unacceptable for individuals accused of witchcraft to be killed, including through extrajudicial processes. It should call upon Governments to ensure that all such killings are treated as murder and investigated, prosecuted and punished accordingly.

## **Conclusion and recommendations of the Special Rapporteur on the question of human rights and extreme poverty**

### **A/HRC/11/9**

95. Cash transfer programmes are today considered an effective means to alleviate poverty and extreme poverty worldwide. In developed countries, where better established social security systems are in place, the transfer of resources to households living in extreme poverty is a longstanding component of a number of social assistance programmes. More recently, cash transfer programmes (CTPs) and conditional cash transfer” programmes (CCTPs) have been developed and replicated in several developing countries.

96. The independent expert recognizes that CTPs are a policy option that can assist States in fulfilling their human rights obligations. Transfers can impact positively on the exercise of a number of economic, social, cultural civil and political rights. In particular, CTPs have the potential to assist in the realization of the right to an adequate standard of living including adequate food, clothing and housing. Hence, the independent expert welcomes the efforts made by States implementing CTPs, in many cases as part of broader national strategies to address extreme poverty.

97. Nonetheless, CTPs are not necessarily the most appropriate and effective means of tackling extreme poverty and protecting human rights in all contexts. CTPs should be seen as only one component of comprehensive efforts to reduce poverty. Weaknesses and deficiencies in the design and implementation of CTPs may result, in practice, in inconsistencies with human rights obligations.

98. While further analysis is required on how CTPs can contribute to, or impact on, the enjoyment on human rights the independent expert will continue to examine the links between human rights and social protection systems, including CTPs, over the course of her mandate.

99. She wishes to present the following recommendations:

(a) Integrate CTPs within social protection systems and ensure solid legal and institutional frameworks:

(ix) States must fully integrate CTPs within broader social protection systems. In order to become a stable component of these systems, CTPs must be well articulated within the existing social security system - its legal and institutional framework must take into account the international and national standards regarding the right to social security;

(x) States must establish solid legal and institutional frameworks in order to guarantee legitimacy, effectiveness and sustainability of CTPs. Legal and institutional frameworks are shields against political and economic instability and, most importantly, are essential elements to ensure clear determination of responsibilities;



(b) Integrate human rights principles and standards throughout the design, implementation and evaluation of CTPs; while taking into consideration specific conditions of each country, in particular demographic, geographic, economic and social conditions, States should ground their decisions on the following principles and standards:

(xi) Equality and non-discrimination: The principle of equality and non-discrimination requires States to give priority to disadvantaged and marginalized individuals and groups. States must ensure that targeting processes and eligibility criteria are fair, effective and transparent, and that they safeguard against discrimination. CTPs must not lead to further stigmatization or social exclusion of any individual or group in society. The principle of non-discrimination also requires that States pay continuous attention to the accessibility and adaptability of the schemes to different physical, geographical, social, cultural contexts, taking into consideration particular constraints faced by groups particularly vulnerable to discrimination;

(xii) Transparency, access to information and accountability: States must ensure that CTPs have built-in mechanisms for the disclosure of information about the programmes' design and functioning. Information on the results of monitoring and evaluation should also be made widely available. Information must be accessible, culturally appropriate and provided in a manner which is accessible to all, in particular those receiving the transfer. States must also ensure that CTPs have complaints mechanisms that are easily accessible, sufficiently resourced and culturally appropriate. Beneficiaries must have access to effective remedies in cases of performance failure or abuses;

(xiii) Meaningful participation:

States must ensure the existence of mechanisms to stimulate meaningful participation by those living in poverty in the context of the implementation of CTPs. The establishment of participatory channels must take into account local power structures and ensure the inclusion of particularly vulnerable groups. The result of meaningful participatory processes should lead to the elimination of asymmetries of power between those receiving benefits and those distributing them, enhancing the capacities of beneficiaries to resist potential political manipulation;

(c) Further assess the impact of conditional cash transfers: States that attach conditions to cash transfer schemes must ensure their implementation does not exclude and further expose to human rights violations those that fail to comply with the established requirements. Prior to attaching conditionality to cash transfers, States and policymakers must undertake in-depth analyses of the programmes' capacity to properly monitor compliance and simultaneously provide social services that correspond to the needs of the population living in extreme poverty;

(d) Mainstream gender perspectives: States must mainstream gender into the design and implementation of CTPs. They should assess whether programmes affect women's decision-making authority and participation, and whether they perpetuate gender-biased stereotyped roles for men and women. Gender equality must also be one of the standards against which the performance of the CTPs are evaluated. States should also strengthen the collection of gender-disaggregated data about the impact of CTPs and ensure that their complaint mechanisms are gender-sensitive;

(e) Integrate CTPs with broader cross-sectoral child-focused policies: States must ensure the full integration of CTPs into a broad range of social policies, and the provision of public services focused on children in other areas, in order to increase their impact on children's lives. Special attention should be paid to some vulnerable groups of children, such as orphans, street children, children with disabilities, and child-headed households States are required to ensure that all children are treated without discrimination of any kind;

(f) Integrate CTPs for persons with disabilities into social protection systems: States must ensure that CTPs for persons with disabilities are integrated into social protection systems. The use of CTPs as a measure to cover the substantive gaps that exist in various national social protection systems is acceptable as long as they are developed within a strategy that pursues the establishment of progressive universal schemes that will ensure the fulfilment of the right to social security. Particular measures to avoid stigmatization and further exclusion must be also devised in parallel to the transfers;

(g) Ensure international cooperation to support the implementation of CTPs: International cooperation is required in order to develop and expand CTPs around the world. In particular, in situations of economic crisis, international support can play a decisive role in the protection of the most vulnerable through CTPs. Cooperation toward the implementation of CTPs must be guided by human rights standards and must particularly consider the long-term integration of the transfers into national social protection systems;

(h) Expanding social protection systems: States should use the momentum created by the current financial crisis to build political consensus to ensure sufficient levels of public spending on social policies and interventions, including the expansion of social security, health and education coverage.

### Conclusion and recommendations of the Special Rapporteur on the right to food

#### A/HRC/10/5

41. While the contributions of donor States to the realization of the right to food in the partner countries are generally made on a purely voluntary basis, this does not exempt donors from complying with the principles of non-retrogression, non-discrimination, and of predictability in the provision of aid. Where States have made commitments to provide certain levels of assistance, as is the case under the FAC and under the Marrakesh Decision, those commitments should be complied with. To the fullest extent possible, such commitments should be to meet objectively assessed needs, so that assistance will be detached from commercial or strategic interests of the donors. Defining international aid as an instrument to fulfil the human right to adequate food could contribute to this shift.

42. Human rights can help complement the principles of aid effectiveness stipulated in the Paris Declaration, and help make them more operational because they provide a framework which is grounded in the international obligations of both donors and recipient States, and because they emphasize the values of participation and accountability. As donors and their partners seek to clarify how to implement these principles, a reference to human rights may provide a focal point on which those discussions can be based. Realizing the first Millennium Development Goal to halve the proportion of people suffering from hunger by 2015, without grounding the policies we develop to fulfil this objective on the human right to adequate food, would lead to policies which were less well informed, less sustainable in the long term, and whose legitimacy would be more easily contested. The recommendations presented in this report are based, not only on the idea that Governments must respect their obligations under international law, but also on the idea that relying on the right to adequate food is useful and operational, and truly adds value to development policies. We ignore the potential of the right to food at our own peril.

43. The Special Rapporteur recommends that:

- (a) Donor States should:
- Make measurable progress towards contributing to the full realization of human rights by supporting the efforts of Governments in developing countries, by maintaining and - to the maximum of available resources - increasing levels of aid calculated as ODA as a percentage of GDP
  - Provide aid on the basis of an objective assessment of the identified needs in developing countries
  - Respect their commitments to provide certain levels of aid at a specific time and in a given period, ensuring adequate justification when commitments are not complied with
  - Support the implementation of the FAO Guidelines in partner countries and their use as a binding reference framework for development cooperation, especially in the field of rural development and concerning advisory services for development strategies such as Poverty Reduction Strategy Papers (PRSPs)

- Fully respect the principle of ownership in their development cooperation policies by aligning these policies with national strategies for the realization of the right to food defined in the partner country with the participation of national parliaments and civil society organizations
  - Promote the right to food as a priority for cooperation with partner countries where hunger or malnutrition are significant problems, focusing on the most vulnerable groups of the society
  - Conduct *ex ante* impact assessments (based on human rights standards and principles) in order to ensure that development policies and investments in all relevant sectors will not lead to violations of the right to adequate food
  - Implement basic human rights principles in development cooperation: transparency, accountability, participation, non-discrimination and empowerment
  - Propose to their partners that they prepare joint assessments, on a regular basis, of the impact of development cooperation on the realization of the right to adequate food, based on the normative components of this right as recognized in international law
- (b) States parties to the FAC should:
- Process the information provided by the Members of the Food Aid Committee about their contributions so as to allow the evaluation by any external observer of a State party's compliance with its commitments
  - Assess States' compliance with article XIII of the FAC within the Food Aid Committee
  - Allow the Food Aid Committee to transform itself into a learning forum for both its Members and the recipient Governments, as well as non-governmental organizations active in the field of food aid, by organizing transparent and joint assessments of the impacts of food aid on long-term food security
  - Ensure that the commitments under the FAC are needs-based, by grounding them on an adequate mapping of food vulnerability and insecurity in the recipient country, and by expressing commitments as a percentage of assessed needs or as a contribution to the cost of meeting the costs of insurance schemes
  - Avoid the monetization of food aid and prioritize cash transfers untied from domestic production or shipping requirements above the provision of food aid in-kind
  - Set up mechanisms, including by reforming internal decision-making processes for the allocation of food aid, in order to ensure that their food aid will be timely and well targeted and will fit into the national strategy for the realization of the right to food adopted at domestic level by the recipient State
  - Seek information about the situation of local markets before deciding on the form in which food aid should be provided, in order to avoid disrupting prices or local agricultural production or, if local purchasing is preferred, contributing to increases in prices which households not covered by the food aid programme may not be able to afford
- (c) States receiving food aid should:
- Ensure an objective mapping of food vulnerability and insecurity, in order to allow adequate targeting of food aid
  - Examine the potential impacts on local agricultural production and on the affordability of food for the poorest segments of the population, before deciding under which form food aid may be accepted and how it should be distributed

- Ensure the delivery of food aid through criteria which are transparent and, in principle, set out in legislation, granting a right to effective remedies to potential beneficiaries which are unjustifiably excluded
- (d) Members of the World Trade Organization should:
- Fully implement the Marrakesh Decision, in particular by adopting guidelines ensuring that an increasing proportion of basic foodstuffs will be provided to least-developed and net food-importing developing countries (LDCs and NFIDCs) negatively affected by the reform programme under the WTO Agreement on Agriculture, in fully grant form and/or on appropriate concessional terms, by providing that the States parties to the FAC shall provide food aid at levels which ensure that NFIDCs will at all times be able to ensure an adequate protection of the right to food under their jurisdiction
- (e) The Committee on Economic, Social and Cultural Rights should systematically request that the reports of States parties to the International Covenant on Economic, Social and Cultural Rights provide information as to:
- Donor States and (a) the proportion of food aid they have committed to deliver in an untied form; (b) the measures they have taken, in their bilateral programmes for the provision of food aid, in order to ensure that the food aid they provide does not undermine, but instead enhances, long-term food security in the recipient State, and the development of its agricultural sector
  - Whether in food-aid recipient States (a) they have ensured that the food aid they receive fits into a national strategy for the realization of the right to food; (b) the criteria for the attribution of food aid are defined transparently in national legislation, guaranteeing access to recourse mechanisms to any right-holder unjustifiably excluded

**Conclusion and recommendations of the Special Rapporteur on the right to food regarding “Crisis into opportunity: reinforcing multilateralism”**

**A/HRC/12/31**

46. We can transform this crisis into an opportunity. But this requires that we ensure that the reinvestment in agriculture effectively contributes to combating hunger and malnutrition; we guarantee the right to social security; we enable countries to cope with volatility of prices on international markets while combating its sources at the same time; and we improve the global governance of food security.

47. With regard to agricultural investment the Special Rapporteur calls on the Human Rights Council:

(a) To encourage the international community (States, international agencies, donor countries) to ensure that the reinvestment in agriculture and rural development effectively contributes to the progressive realization of the right to food, by:

- (i) Accelerating the work for better implementation of relevant ILO conventions in rural areas, in order to guarantee that those working on farms can be guaranteed a living wage, adequate health and safe conditions of employment;
- (ii) Undertaking rigorous comparative assessments of the impact of different agricultural modes of production on the right to food;
- (iii) Channelling adequate support to sustainable farming approaches that benefit the most vulnerable groups and that are resilient to climate change and the depletion of hydrocarbons;
- (iv) Prioritizing the provision of public goods, such as storage facilities, extension services, means of communications, access to credit and insurance, agricultural research and the organization of farmers in cooperatives;
- (v) Encouraging States to locate their efforts in reinvesting in agriculture under national strategies for the realization of the right to adequate food that include mapping of the food insecure, adoption of relevant legislation and policies, and the establishment of mechanisms to ensure accountability, and which are adopted through participatory mechanisms;

(b) To promote the adoption of a multilateral framework that ensures that large scale land acquisitions or leases are balanced, conducive to sustainable development and comply with human rights, including the right to food, the right to adequate housing and the right to development;

(c) To encourage the international community to accelerate work on reaching international consensus on agrofuels that includes environmental standards and incorporates requirements of human rights instruments, paying attention in particular to the specific needs of smallholders.

48. With regard to social protection, the Special Rapporteur calls on the Council:

(a) To encourage States to guarantee the right to social security to all, without discrimination, through the establishment of standing social protection schemes, and to ensure that, when targeted schemes are adopted, they are based on criteria that are fair, effective and transparent;

(b) To encourage the international community to put in place a global reinsurance mechanism, creating an incentive for countries to set up robust social protection programmes for the benefit of their populations.

49. With regard to volatility on international markets, the Special Rapporteur encourages the international community to better manage the risks associated with international trade and to ensure least-developed and net food-importing developing countries better protection from the volatility of international market prices, and to combat volatility on international markets more effectively by:

(a) The full implementation of the Marrakesh Decision within WTO;

(b) Encouraging the establishment of food reserves at the local, national or regional levels;

(c) Improving the management of grain stocks at the global level, including improved information about and coordination of global grain stocks to limit the attractiveness of speculation;

(d) Establishing an emergency reserve that allows WFP to meet humanitarian needs at pre-crisis prices;

(e) Examining further the proposals for a minimum physical grain reserve to stabilize markets, and for other means to combat speculation on the futures markets of agricultural commodities by commodity index funds.

50. With regard to the strengthening of global governance, the Special Rapporteur calls on the Council to encourage States to transform the Committee on World Food Security into a forum in which Governments, international agencies and civil society organizations can discuss issues that call for more cooperation between States, adopt guidelines revised at regular intervals and improve accountability by monitoring achievement of time-bound targets set by States and international agencies for the implementation of those guidelines.

### **Conclusions and recommendations of the Independent Expert on the effects of economic reform policies and foreign debt**

#### **A/HRC/11/10**

91. This report has outlined some basic elements underpinning a conceptual framework for understanding the relationship between foreign debt and human rights and has argued for a human rights-based approach to the debt crisis that takes into consideration the principles of transparency, accountability, participation and non-discrimination, and the universality, interdependence and indivisibility of all human rights. While the proposed elements for the framework are identified on a tentative basis and require further elaboration, the independent expert considers that the principles outlined therein serve as a useful starting point for addressing the debt crisis in a just, equitable and sustainable manner.

92. The problem of debt is not an exclusively economic one; it has political, ethical, moral and legal dimensions. It therefore cannot be addressed from an exclusively economic focus. The independent expert is firmly of the view that human rights must occupy a central place in the global responses to the debt crisis if the outcome is to have a real impact on the intended beneficiaries. A human rights-based approach

to the debt crisis will ensure that the methods for achieving economic growth are just and that its benefits are fairly distributed. This approach is consistent with the centrality of human rights within the broader mission of the United Nations and with the commitments expressed in the Monterrey Consensus.

93. In paragraph 37 of his preliminary report to the General Assembly (A/63/289), the independent expert intimated that, in order to guarantee the acceptability and effective implementation of the draft general guidelines on foreign debt and human rights, it is necessary to ensure the fullest possible participation of all stakeholders (including civil society organizations and right-holders in the affected countries) in the finalization of the guidelines. Owing to financial constraints, however, the independent expert is unable to seek more diverse views from different stakeholders nationally and regionally. In this regard, he wishes to call upon all Member States to provide adequate resources to enable him to carry out regional consultations on the draft guidelines.

94. In its resolution S-10/1 on the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights, the Council invited all relevant thematic special procedures, within their respective mandates, building on the deliberations of the special session of the Council, “to consider any of the impacts of the global economic and financial crises on the realization and enjoyment of all human rights particularly economic, social and cultural rights, and to integrate their findings in this regard into their regular reports to the Council”.<sup>43</sup> In response to this invitation, the independent expert makes the following preliminary observations based on his contribution to the special session.

95. The independent expert notes that the current global economic and financial crises proffer a prime opportunity to integrate principles such as accountability, participation and transparency into the process of reforming the global financial architecture, working towards a more equitable system that not only promotes economic prosperity, but also more fundamentally advances the enjoyment of all human rights.<sup>44</sup>

96. The current global financial and economic crises should not result in a decrease in debt relief, nor should they be used as an excuse to stop debt relief measures, as that would have negative implications for the enjoyment of human rights in the affected countries. As indicated earlier in this report, the gains from debt relief are already being undermined by a variety of factors, including an unequal global trading environment and onerous conditionality attached to debt relief. The current crises are likely to make this reality worse unless a bolder approach to the debt crisis is adopted that places human rights at its core to ensure that the most vulnerable are not further marginalized.

97. The independent expert suggests that both creditors (particularly, international financial institutions) and debtors should, as a preliminary step towards incorporating a human rights-based approach to development cooperation in general and the debt problem in particular, urgently consider the preparation of human rights impact assessments with regard to development projects, loan agreements or Poverty Reduction Strategy Papers given that the World Bank has extensive experience in the preparation of environmental impact assessments, this proposal would not represent a new method of working if also applied to human rights, particularly if the Bank collaborates with the relevant United Nations human rights organs and bodies.

98. A related idea is the use of indicators in order to assess the progressive realization of economic and social rights. In keeping with the request of the Council in its resolution 7/4, the independent expert will devote attention to the potential role of indicators in assessing the impact of commitments arising from debts on the capacity of States to implement their human rights obligations and to attain the MDGs. In this regard, he anticipates working in concert with other stakeholders who are undertaking work on human rights indicators.

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<sup>43</sup> Human Rights Council resolution S-10/1 para. 9.

<sup>44</sup> In paragraph 9 of the Monterrey Consensus, States have declared their commitment to “promoting national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion”.

99. The independent expert welcomes the views of Member States on any aspect of this report and on his mandate in general, and especially on the issues on which he intends to primarily focus in the coming year: the draft guidelines on foreign debt and human rights, trade and debt, and creditor co-responsibility and illegitimate debt.

### Conclusions and recommendations of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression

#### A/HRC/11/4

56. This report outlines the vision and priorities of the Special Rapporteur for his mandate that he wishes to share with Member States and other stakeholders in a spirit of openness and transparency. The Special Rapporteur hopes that this same spirit will characterize his relationship with them throughout his tenure.

57. The Special Rapporteur will interpret the mandate by building on the achievements of his predecessors and the knowledge base developed and methods of work used.

58. Given that this is his first report, the Special Rapporteur has focused on two areas only which he deems as priority for the mandate. Future reports will aim to further develop thematic issues related to the fundamental right of freedom of opinion and expression. As such, the Special Rapporteur will be in a position to present more detailed recommendations based on the activities and trends which he will identify during his first year as mandate-holder.

#### *A. Access to information in situations of extreme poverty*

59. Rights to information and freedom of expression should be encouraged at all levels. The Special Rapporteur urges Governments to deregulate the communications and media environment to allow free and fair information to flow more effectively to civil society. Support for enhancing such flows and targeted interventions that support the most vulnerable and marginalized groups within society at large should be given priority.

60. The Special Rapporteur further encourages States to uphold the rights to freedom of expression and access to information stipulated within article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Public access to information can be systematically denied by Governments and, similarly, Governments can place restrictions on free speech and freedom of expression via legislation and activities that deny rights of political and cultural association. Openness of government and the free flow of information are enshrined within the principle of “maximum disclosure” through which Governments and public institutions become more answerable to the general public. A civil society that is empowered with open information is better placed to advocate for more impartial and transparent service delivery and has a greater sense of participation and ownership in decision-making processes.

61. Governments may be poorly placed to systematically disseminate information to the public or may not be inclined towards such transparency because of high levels of corruption. The Special Rapporteur recommends that in such cases support for the media during times of conflict and deregulation of the communications and media environment be seen as mechanisms for increasing the plurality and diversity of information flows in poor and conflict-prone countries.

62. The Special Rapporteur encourages Governments to strengthen public broadcasting and to introduce anti-monopoly legislation in order to achieve a diverse broadcasting system which is accessible to all. Policies should promote freedom of expression and public participation.

63. Community-based broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion. People faced with economic exclusion also face systemic obstacles to freedom of expression that are associated with the conditions of poverty, including low levels of education and literacy, poor infrastructure, lack of access to electricity and general communications services. The Special Rapporteur recommends that Governments consider community broadcasting as a vital tool for the voiceless, which would enable them to exercise their right to freedom of expression and access to information. Such programmes should encourage active participation of the community in their initiation, production and presentation to empower the poorest people and communities and as a means of reducing poverty.

*B. Safety and protection of media professionals*

64. The Special Rapporteur reiterates the recommendations of his predecessors that Governments should translate their formal concerns about the safety of journalists, elaborated in international forums and treaty law, into concrete measures for enhancing the safety of journalists and other media personnel including at the legislative, administrative and judicial levels. Measures should be taken to protect all media personnel regardless of their professional and political affiliation. The protection of journalists and media workers must be ensured at all times, particularly during armed conflicts, states of emergency and public disorder and electoral processes. Governments are also urged to ensure the protection of other groups at risk, such as trade unionists, social workers, students and teachers, writers and artists.

65. Creating a culture of safety for journalism adds to the capacity of media to contribute to building prosperous and confident democracies. The Special Rapporteur urges Governments and State institutions to provide support and an assurance that all acts of violence against journalists are fully investigated. Limiting impunity for the perpetrators of crimes against media professionals will function as an important deterrent against the repetition of these crimes.

66. The Special Rapporteur encourages Governments to develop protection schemes for media personnel. News associations should be supported in promoting actions that secure the safety of journalists, including safety training, health care, life insurance, and equal access to social protection for freelance employees and full-time staff.

67. The Council may wish to consider the opportunity, as previously suggested by his predecessor, of entrusting the Special Rapporteur with the preparation of a study on the causes of violence against media professionals, based, inter alia, on information from and the experiences of Governments, intergovernmental and non-governmental organizations, and including a comprehensive set of conclusions and recommendations and the drafting of guidelines for the protection of journalists and other media professionals. This study could represent the first step towards a debate, within the Human Rights Council, on this crucial issue, following the discussions held by other bodies, including the Security Council.

**Conclusions and recommendations of the Special Rapporteur on freedom of religion or belief**

**A/HRC/10/8**

55. Sixty years ago, the General Assembly adopted the Universal Declaration of Human Rights, which stipulates, inter alia, that “the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”. It furthermore emphasized that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Unfortunately, there remains a long way to go in order to achieve the goals laid down in the Declaration. Indeed, discrimination based on religion



or belief preventing individuals from fully enjoying all their human rights still occurs worldwide on a daily basis.

56. The issue of discrimination based on religion or belief has been at the heart of the mandate since its inception in 1986, when the mandate was still entitled “Special Rapporteur on religious intolerance”. Over the years, the Special Rapporteur has reported on numerous cases of discrimination adversely affecting civil, cultural, economic, political and social rights. By discussing the impact of discrimination based on religion or belief on the enjoyment of economic, social and cultural rights in the present report, the Special Rapporteur has highlighted some of the problematic trends in this area. She hopes that this preliminary analysis might lead to a deeper reflection on this important issue.

57. In many countries, religion is exploited for political ends. As illustrated in the report, discrimination based on religion or belief often emanates from deliberate State policies to ostracize certain religious or belief communities and to restrict or deny their access to, for example, health services, public education or public posts. State authorities usually tend to be more sensitive to the interests of a religious majority community and, as a result, minority religions or beliefs may find themselves marginalized or discriminated against.

58. The Special Rapporteur recalls that States have the duty to refrain from discriminating against individuals or groups of individuals based on their religion and belief (obligation to respect); they are required to prevent such discrimination, including from non-State actors (obligation to protect); and must take steps to ensure that, in practice, every person in their territory enjoys all human rights without discrimination of any kind (obligation to fulfil).

59. In order to implement these obligations, States have several tools at their disposal. These include the removal of de jure and de facto obstacles to the exercise on an equal footing of all human rights. In this regard, the training of State officials may constitute an important measure to ensure that the principle of non-discrimination, including on the basis of religion or belief, is respected by the State. Monitoring compliance with anti-discrimination legislation by the private sector and offering quality public education also seem vital to promote the principle of non-discrimination in society. Furthermore, legal remedies must be provided to individuals in order to allow them to seek redress against discrimination based on religion or belief. In addition, States should envisage protective measures in favour of certain population groups, including religious minorities, to provide those who do not have sufficient means with equal access to basic services, such as health care or education.

60. In order to take appropriate measures to remedy persistent inequalities and religious differentials in relation to all human rights, the Special Rapporteur recommends that States collect disaggregated data and that they encourage in-depth analyses pertaining to the socio-economic situation of religious and belief communities. However, she cautions against improper utilization of these data, which may further cluster the population into artificial categories and ultimately lead to a more polarized and intolerant society.

61. All human rights are universal, indivisible, interdependent and interrelated. Consequently, there should not be a different approach between discrimination affecting the enjoyment of civil and political rights on the one hand, and discrimination affecting the enjoyment of economic, social and cultural rights on the other. As reiterated in several general comments by the Committee on Economic, Social and Cultural Rights, the principle of non-discrimination in the enjoyment of the rights guaranteed by the Covenant on Economic, Social and Cultural Rights is not subject to the rule of the progressive realization of rights or to the availability of resources. It is immediately and fully applicable to all the rights guaranteed by the Covenant and encompasses all internationally prohibited grounds of discrimination.

62. The entry into force of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights recently adopted by the General Assembly should enable those suffering from violations of their economic, social and cultural rights to seek remedies and to hold those responsible to account for their actions. In a joint press statement of 10 December 2008, the Special Rapporteur and 35 other special procedures mandate-holders expressed their sincere hope that the views adopted by the Committee on

Economic, Social and Cultural Rights under the Optional Protocol procedures will be used by the human rights community to assist States in taking concrete steps to realize the rights of all and to reach out to the most marginalized and disadvantaged, who are the most likely to have their rights violated. In the view of the Special Rapporteur, the promotion of the realization of economic, social and cultural rights may ultimately contribute to enhancing religious tolerance and preventing discrimination.

### Conclusions of the Special Rapporteur on the right to health

#### A/HRC/11/12

94. The framework of the right to health makes it clear that medicines must be available, accessible, acceptable, and of good quality to reach ailing populations without discrimination throughout the world. As has been evident, trade related intellectual property rights (TRIPS) and free trade agreements (FTA) have had an adverse impact on prices and availability of medicines, making it difficult for countries to comply with their obligations to respect, protect, and fulfil the right to health.
95. Similarly, lack of capacity coupled with external pressures from developed countries has made it difficult for developing countries and LDCs to use TRIPS flexibilities to promote access to medicines.
96. Flexibilities were included in TRIPS to allow States to take into consideration their economic and development needs. States need to take steps to facilitate the use of TRIPS flexibilities.
97. The Special Rapporteur therefore recommends that developing countries and LDCs should review their laws and policies and consider whether they have made full use of TRIPS flexibilities or included TRIPS-plus measures, and if necessary consider amending their laws and policies to make full use of the flexibilities.
98. LDCs should make full use of the transition period and in relation to medicines revoke or suspend their patent laws, if necessary, for the balance of the period. LDCs should also consider asking for a further extension of the transition period.
99. LDCs should use the transition period to seek the most effective technical and other assistance from countries and institutions to develop technical capacity and also explore options to establish local manufacturing capabilities.
100. Developing countries and LDCs should establish high patentability standards and provide for exclusions from patentability, such as new forms and new or second uses, and combinations, in order to address ever-greening and facilitate generic entry of medicines.
101. Developing countries and LDCs should adopt the principle of international exhaustion and provide for parallel importation with simplified procedures in their national laws.
102. Developing countries and LDCs need to incorporate in their national patent laws all possible grounds upon which compulsory licences, including government use, may be issued. Such laws provide straightforward, transparent procedures for rapid issue of compulsory licences. There is also a need to revisit the 30 August decision and provide for a simpler mechanism.
103. Developing countries and LDCs should specifically adopt and apply pro-competition measures to prevent the abuse of the patent system, particularly in regard to access to medicines.
104. Developing countries and LDCs should incorporate both Bolar (early working) and research, experimental and educational exceptions in their patent laws and explore how additional limited exceptions could further promote access to medicines.

105. Developing countries and LDCs should establish liberal pre-grant, post-grant opposition and revocation procedures, which can be taken advantage of by all concerned stakeholders, including patients' groups.

106. Developing countries and LDCs should seek international assistance in building capacity to implement TRIPS flexibilities to promote the right to health. WHO and other United Nations bodies could provide such assistance.

107. LDCs and developing countries should actively promote the participation of individuals and communities in decision-making processes relating to TRIPS and TRIPS flexibilities and conduct impact assessments of the same.

108. Developing countries and LDCs should not introduce TRIPS-plus standards in their national laws. Developed countries should not encourage developing countries and LDCs to enter into TRIPS-plus FTA and should be mindful of actions which may infringe upon the right to health.

109. All technical assistance and cooperation by developed countries, WHO and the World Intellectual Property Organization (WIPO), to developing countries and LDCs should be based on the obligation to respect, protect and fulfil the right to health.

### **Conclusions of the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, mission to GlaxoSmithKline**

#### **A/HRC/11/12/Add.2**

106. This report includes numerous conclusions and recommendations for GSK, all pharmaceutical companies, States, international organisations and others and they will not be repeated here.

107. A member of the senior management of an innovator pharmaceutical company recently remarked to the Special Rapporteur that the company's patents were "its crown jewels". The image was revealing. In one sense, the image is legitimate – patents are immensely valuable. In another sense, the image reflects a profound misunderstanding of the role of a company that develops a life saving medicine. As discussed in chapter II, such a company has performed a critically important social, medical, public health and right to health function. While the company's "reward" is the grant of a limited monopoly over the medicine, enabling it to enhance shareholder value and invest in further research and development, the company also has a right to health responsibility to take all reasonable steps to make the life saving medicine as accessible as possible, as soon as possible, to all those in need. For a limited period, the company holds the patent for society – but the patent must be worked, so far as possible, for the benefit of all those who need it.

108. The status of innovator companies would be immeasurably enhanced if they did not see, and treat, patents as their "crown jewels". Companies must grasp, and publicly recognize, their critically important social function and right to health responsibilities. They must demonstrably do everything possible, within a viable business model, to fulfil their social function and human rights responsibilities. Presently, this is not happening. If it were to happen, it would not only greatly enhance companies' status but also pressurize States, generic manufacturers and others to provide the environment that companies need if they are to enter into arrangements, such as commercial voluntary licences, that enhance access to medicines for all.

109. In 2008, the Special Rapporteur presented to the General Assembly Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines (A/63/263). These provide detailed guidance for all pharmaceutical companies on their right to health responsibilities, as well as society's legitimate "expectations" of the pharmaceutical sector.

**Conclusions and recommendations of the Special Rapporteur on the situation of human rights defenders**

**A/HRC/10/12**

97. The Special Rapporteur is convinced that the UPR process has the potential to provide an important tool for civil society, and human rights defenders in particular, to trigger a genuine dialogue with their respective Governments before, throughout and after the review. The UPR can generate a genuine platform to enhance the protection of human rights defenders, and to strengthen the cooperation between national stakeholders. The UPR is also a challenge for civil society stakeholders to appreciate and fully use this opportunity for human rights defenders on the ground.

98. The Special Rapporteur considers national consultations crucially important for human rights defenders, in order for their views and concerns to be properly reflected in the national report which forms one of the bases of the UPR process. The Special Rapporteur therefore recommends that States observe the following guidelines when organizing such national consultations.

99. The national consultations, as encouraged by the institution-building package adopted by the Human Rights Council:

- (a) Should be organized prior to the finalization of the national report;
- (b) Should be inclusive and all-encompassing;
- (c) Should be more than merely nominal: the views of civil society should be reflected

adequately in the national report.

Unregistered organizations should also be invited to the national consultations and restrictive NGO registration laws should not be used as an excuse to exclude human rights defenders from the consultation process.

100. The Special Rapporteur suggests that OHCHR, subject to the availability of resources for this purpose, should give more guidance and training, preferably in the form of technical assistance or information notes, on how best to structure UPR submissions. A model questionnaire could also be developed. This would ensure that OHCHR receives information in a way that can be best processed, and would improve the quality of the summary of stakeholder information.

101. The Special Rapporteur also reminds Governments that the UPR Voluntary Trust Fund, foreseen in the institution-building package to facilitate the participation of developing countries, particularly the least developed countries in the UPR mechanism, could potentially also be used for the training of human rights defenders on the UPR.

102. Raising awareness and capacity-building is necessary in order to bring the UPR mechanism closer to human rights defenders on the ground. The Special Rapporteur therefore urges Governments that are scheduled to be examined by the UPR, to share information about the UPR mechanism within their civil society and encourage the participation of human rights defenders in it.

103. The Special Rapporteur further urges States under review to include information in their national reports on the implementation of the Declaration on human rights defenders, the steps taken to ensure an enabling environment for human rights defenders in their country, and any relevant issues pertaining to the situation of human rights defenders.

104. The Special Rapporteur urges stakeholders to systematically include information about the situation of human rights defenders and about the implementation of the Declaration on human rights defenders, in their submissions to the UPR.

105. During the interactive dialogue conducted in the Working Group, the Special Rapporteur encourages States to put pertinent, topical questions regarding the situation of human rights defenders in

the State under review, and to provide concrete, actionable recommendations on them. Recommendations on human rights defenders should be specific and detailed, not only mere mission statements. The UPR should be an opportunity to distil best practices with respect to specific problems faced by human rights defenders and should recommend concrete and detailed policy outcomes.

106. The Special Rapporteur suggests that States allow in all cases, without the need for express consent, the possibility of side events/parallel events during UPR sessions, following the example of the lunchtime briefings of the treaty bodies. So far such parallel events have only been allowed if the State under review has agreed.

107. The Special Rapporteur considers that NGOs should be allowed to speak during the interactive dialogue at the Working Group stage of the UPR. An amendment to the institution-building provisions regarding participation by NGOs could be undertaken during the five-year review foreseen for 2011.

108. The scope for general comments before the adoption of the outcome by the plenary should be broadly interpreted. The raising of issues not discussed during the examination is important in showing whether the examination has been comprehensive and meaningful.

109. The Special Rapporteur calls on States to ensure effective follow-up on the national level by consulting civil society and human rights defenders about the problems identified and the recommendations put forward during the UPR process. The organization of the follow-up consultation process should be similarly inclusive and meaningful as the consultations prior to the finalization of the national report. An effective follow-up also requires inter alia, the wide dissemination of the report and outcomes of the UPR; the design of a national action plan on human rights defenders if it does not already exist; and the organization of annual meetings to assess the status of implementation.

110. Recommendations stemming from the UPR should be regarded holistically, together with the recommendations of other human rights mechanisms, namely the treaty bodies, special procedures and regional mechanisms. UPR recommendations should not be looked at in isolation, but as part of the broader assessment made by other human rights mechanisms.

111. The Special Rapporteur recommends that treaty bodies and special procedures mandate holders make use of the recommendations stemming from the UPR process with regard to human rights defenders, and raise them with countries concerned during country visits or examinations of reports. The Special Rapporteur further suggests that treaty bodies especially follow up on recommendations rejected by the State under review, in cases where such rejected recommendations run counter to previous recommendations issued by treaty bodies, or the treaty obligations of the State.

112. The outcome report could potentially include an analysis of the compilations of United Nations information and the summaries of stakeholder information. Without such content, valuable information goes completely unmentioned in the outcome of the review. In the absence of such a change, the Special Rapporteur recommends that the outcome of the review should always be considered in conjunction with the other documents forming the basis of the review, including the compilation of United Nations information and the summary of stakeholder information.

113. The Special Rapporteur recommends that States seeking election to the Human Rights Council systematically include among their voluntary pledges and commitments the implementation of the Declaration on human rights defenders.

114. The Special Rapporteur will systematically send letters to States coming up for review to recommend the inclusion of human rights defenders in national consultations, and the inclusion of information about the implementation of the provisions of the Declaration on human rights defenders.

## Conclusions and recommendations of the Special Rapporteur on the independence of judges and lawyers

A/HRC/11/41

95. The present report demonstrates the number and variety of factors that impact on the independence of judges, both in an individual and institutional dimension. It shows that procedures for the selection and appointment of judges as well as the term and security of their tenure are key factors to ensure the independence of judges. Among the factors endangering the independence of the judiciary, the Special Rapporteur underscores with profound concern the growing tendency of several Member States to fail to comply with their obligation to appoint an adequate number of judges necessary for an effective functioning of the administration of justice and to appoint temporary or probationary judges. Moreover, the possibility of a judicial career, including procedures for promotion, and adequate working conditions are decisive factors for the status of judges. A constitutionally provided guarantee of the independence of the judiciary is paramount, along with respect to the principle of the “lawful” judge. Emphasis is to be given to the allocation of sufficient funding to the judiciary and a self-governed financial management. Independence from within the judiciary was noted as an important concern, together with the assignment of court cases. Finally, the right of judges to participate in general and legal debates, together with the guarantee to form and join associations and to defend their status and rights in a corporate way were given special attention.

### *B. Recommendations*

96. In order to assist Member States to strengthen the independence of judges, the Special Rapporteur makes the recommendations that follow.

97. With respect to selection, appointment and promotion of judges, he recommends that:

- Member States consider establishing an independent body in charge of the selection of judges, which should have a plural and balanced composition, and avoid politicization by giving judges a substantial say.
- Member States adopt legislation enshrining objective criteria to be applied in the selection of judges, ensuring that selection of judges be based on merit only. Member States consider the possibility of selecting judges by competitive exams conducted at least partly in a written and anonymous manner.
- Selection and appointment procedures be transparent and public access to relevant records be ensured.
- Clear procedures and objective criteria for the promotion of judges be established by law. Final decisions on promotions be preferably taken by the independent body in charge of the selection of judges.

98. As regards tenure, irremovability, disciplinary measures and immunity, the Special Rapporteur recommends that:

- Member States consider the progressive introduction of life tenures for judges.
- Reviews of judges’ appointments by the executive be abolished.
- Specific safeguards be established to ensure that probationary appointments of judges do not put the independence of the judiciary at stake. Probationary judges be automatically granted life appointment or fixed tenure unless they were dismissed as a consequence of disciplinary measures or the decision of an independent body following a specialized procedure that determined that a certain individual is not capable of fulfilling the role of a judge.
- Member States give paramount attention to upholding the key principle of irremovability.

- Member States establish an independent body in charge of disciplining judges.
  - Member States adopt legislation giving detailed guidance on the infractions by judges triggering disciplinary measures, including the gravity of the infraction which determines the kind of disciplinary measure. Disciplinary measures must be proportional to the gravity of the infraction.
  - Decisions related to disciplinary measures be made public.
  - Adequate civil and criminal immunity for judges be guaranteed by the Constitution or equivalent, and that detailed procedures for lifting immunity be inscribed in law, reinforcing the independence of the judiciary.
99. Regarding conditions of service, he recommends that:
- Judges be remunerated adequately, with due regard for the responsibilities and the nature of their office and without delay.
  - Adequate human and material resources be allocated to ensure the proper functioning of justice.
  - Special attention be paid to ensuring the security of judges, in particular the adoption of preventive security measures for increased protection of judges handling cases of large-scale corruption, organized crime, terrorism, crimes against humanity, or any other cases exposing them to higher risk.
  - Besides pre-service and initial training, focused attention be paid to continuing legal education of sitting judges.
100. With respect to institutional guarantees, the Special Rapporteur recommends that:
- Competencies of the different branches of power be clearly distinguished and enshrined in the Constitution or equivalent.
  - The independence of the judiciary be enshrined in the Constitution or be considered as a fundamental principle of law. Both principles must adequately be translated into domestic law.
101. As regards the judicial budget, he recommends that:
- A minimum fixed percentage of gross domestic product (GDP) be allocated to the judiciary by the Constitution or by law. Under important domestic economic constraints, the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.
  - The judiciary be given active involvement in the preparation of its budget.
  - The administration of funds allocated to the court system be entrusted directly to the judiciary or an independent body responsible for the judiciary.
102. To strengthen freedom of expression and association of judges, the Special Rapporteur recommends that:
- Freedom of expression and association of judges be effectively guaranteed by law and practice.
  - The establishment of a Judges' Association be supported by Member States on account of its importance as a guarantor of an independent judiciary.
103. To strengthen structures and procedures within the judiciary, he recommends that:
- Member States create a mechanism to allocate court cases in an objective manner.
  - Adequate structures within the judiciary and the courts be established to prevent improper interference from within the judiciary.

- Allegations of improper interference be inquired by independent and impartial investigations in a thorough and prompt manner.

104. The present analysis and the above recommendations are based on the vast experience accumulated by the mandate since its creation in 1994. The Special Rapporteur is of the opinion that time has come to approve a comprehensive set of principles in order to ensure and further the independence of the judiciary. This tool may serve as a reference to all Member States and particularly those undergoing a period of political transition. Furthermore, the Special Rapporteur recommends that the mandate elaborate an updated study on individual and institutional parameters to ensure and strengthen the independence of prosecutors, public defenders and lawyers.

## Conclusions and recommendations of the Special Rapporteur on human rights and fundamental freedoms of indigenous peoples

A/HRC/12/34

### *Implementation of the mandate*

#### *1. Cooperation with other mechanisms and bodies*

58. Coordination with the Permanent Forum on Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples is an important aspect of the implementation of the mandate of the Special Rapporteur. The respective mandates of those three mechanisms, which were created at different times and in response to different moments in the international movement to protect the rights of indigenous peoples, are complementary but also overlapping in certain ways. Ongoing efforts at coordination among the three mechanisms should be strengthened and consolidated into a permanent feature of their work both jointly and separately.

59. Likewise, the Special Rapporteur welcomes opportunities for his cooperation with agencies and programmes throughout the United Nations system, as well as with regional and specialized institutions. This cooperation should continue in order to promote awareness of indigenous issues and programmatic action that is conducive to mainstreaming those issues and to effectively implementing standards of indigenous rights as affirmed in relevant international instruments.

#### *2. Areas of work*

60. The Special Rapporteur's work pursuant to his mandate falls within four interrelated and mutually reinforcing areas: promoting good practices; thematic studies; country reports; and cases of alleged human rights violations, with the latter category being the one that has required the greatest amount of attention on an ongoing basis. The Special Rapporteur is grateful for the cooperation he has received from several States, indigenous peoples and others in all aspects of his work. He urges States that have not responded to his communications of alleged human rights violations to do so, and also urges States to respond positively to requests for country visits.

#### *3. The duty to consult*

61. A core issue that the Special Rapporteur has repeatedly confronted is a lack of adequate consultation with indigenous peoples on matters that affect their lives and territories. A lack of adequate consultation is related to conflictive situations and profound expressions of discontent, mistrust and even anger on the part of indigenous peoples in various scenarios across the world. The Special Rapporteur perceives a need on the part of States and other stakeholders for orientation about the relevant normative parameters and measures necessary for compliance with the duty to consult with indigenous peoples, in accordance with international standards. In the following paragraphs, the Special Rapporteur summarizes his conclusions on certain aspects of the duty to consult, and adds recommendations.



#### 4. Normative framework and national laws, policies and practice

62. In accordance with the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, States have a duty to consult with indigenous peoples through special, differentiated procedures in matters affecting them, with the objective of obtaining their free, prior and informed consent. Premised on an understanding of indigenous peoples' relative marginalization and disadvantaged conditions in regard to normal democratic processes, this duty derives from the overarching right of indigenous peoples to self-determination and from principles of popular sovereignty and government by consent; and it is a corollary of related human rights principles.

63. The duty to consult applies whenever a legislative or administrative decision may affect indigenous peoples in ways not felt by the State's general population, and in such cases the duty applies in regard to those indigenous groups that are particularly affected and in regard to their particular interests. The duty to consult does not only apply when substantive rights that are already recognized under domestic law, such as legal entitlements to land, are implicated in the proposed measure.

64. States should develop mechanisms for determining and analysing if, and the extent to which, proposed legislative or administrative measures, including those for natural resource extraction or other development activities, affect indigenous peoples' particular interests, in order to determine the need for special consultation procedures well before the measures are taken.

65. The specific characteristics of the required consultation procedures will vary depending on the nature of the proposed measure, the scope of its impact on indigenous peoples, and the nature of the indigenous interests or rights at stake. Yet, in all cases in which the duty to consult applies, the objective of the consultation should be to obtain the consent or agreement of the indigenous peoples concerned. Hence, consultations should occur early in the stages of the development or planning of the proposed measure, so that indigenous peoples may genuinely participate in and influence the decision-making.

66. The principle that indigenous consent should be the objective of consultation does not mean that obtaining consent is an absolute requirement for all situations. In all cases, what fundamentally matters is that a good faith effort by the State is made to achieve agreement. Indigenous peoples, as well, should seek in good faith to reach consensus on proposed measures and avoid inflexible positions when the proposed measures are based on legitimate public interests.

67. Notwithstanding the necessarily variable character of consultation procedures in various contexts, States should define into law consultation procedures for particular categories of activities, such as natural resource extraction activities in, or affecting, indigenous territories. Such mechanisms that are included into laws or regulations, as well as ad hoc mechanisms of consultation, should themselves be developed in consultation with indigenous peoples.

68. Consulting with indigenous peoples on the very elements of the consultation procedure to be employed not only helps to ensure that the procedure is effective, it is also an important, necessary confidence-building measure. Other measures for confidence-building are also needed.

69. In this regard, States should make every effort to allow indigenous peoples to organize themselves and freely determine their representatives for consultation proceedings, and should provide a climate of respect and support for the authority of those representatives. For their part, indigenous peoples should work, when needed, to clarify and consolidate their representative organizations and structures in order that they may function effectively in relation to consultation procedures.

70. States should also develop adequate analyses and impact assessments of proposed legislative or administrative measures, and make them available to the indigenous peoples concerned along with all relevant information well in advance of negotiations. States should also endeavour to ensure that indigenous peoples have adequate technical capacity and financial resources in order to effectively participate in consultations, without using such assistance to leverage or influence indigenous positions in the consultations.

71. Relevant agencies and programmes within the United Nations system, as well as concerned NGOs, should develop ways to provide indigenous peoples with access to the technical capacity and financial resources they need to effectively participate in consultations and related negotiations.
72. Even when private companies, as a practical matter, are the ones promoting or carrying out activities, such as natural resource extraction, that affect indigenous peoples, States maintain the responsibility to carry out or ensure adequate consultations. For their part, as a matter of policy if not legal obligation, private companies should conform their behaviour at all times to relevant international norms concerning the rights of indigenous peoples, including those norms related to consultation.
73. Private companies that operate or seek to operate on or in proximity to indigenous lands should adopt codes of conduct that bind them to respect indigenous peoples' rights in accordance with relevant international instruments, in particular the United Nations Declaration on the Rights of Indigenous Peoples. States should develop specific mechanisms to closely monitor company behaviour to ensure full respect for indigenous peoples' rights, and to ensure that required consultations are fully and adequately employed.
74. States should take measures to improve the mediation capacity of Government agencies, in partnership with companies if applicable, to deal with potentially conflicting interests in relation to indigenous land and resources, and to work with all stakeholders to implement such mechanisms and ensure protection from discrimination and equal opportunities to indigenous peoples in this regard.

**Conclusions and recommendations of the International Expert Seminar on the role of the United Nations mechanisms with a specific mandate regarding rights of indigenous people**

**A/HRC/12/34/ Add.7**

United Nations Declaration on the Rights of Indigenous Peoples

4. The United Nations Declaration on the Rights of Indigenous Peoples provides the framework for action towards the full protection and implementation of indigenous peoples' rights.
5. The United Nations Declaration on the Rights of Indigenous Peoples is the principal normative framework for the three United Nations mechanisms with a specific mandate regarding indigenous peoples' rights, and it should also constitute an important frame of reference for the United Nations treaty bodies and other relevant international and regional human rights mechanisms.
6. Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples requires the three mechanisms to apply the Declaration universally, irrespective of the positions of individual States on the Declaration.

General coordination

7. The three mechanisms should take advantage of their participation at the annual sessions of the Permanent Forum and Expert Mechanism to meet and coordinate their work agendas. In any case, the three mechanisms should consider holding an annual meeting to coordinate their work.
8. The Chairperson, or, if this is not possible, a designated member of the Permanent Forum and of the Expert Mechanism, and the Special Rapporteur should always participate in the annual sessions of the Permanent Forum and the Expert Mechanism.
9. The three mechanisms should consult with the Inter-Agency Support Group to develop methods for strengthening coordination and cooperation with United Nations agencies.

Division of labour among mechanisms

10. Taking into account the specific terms of their respective mandates, each of the three mechanisms should avoid engaging in work that is the special focus of the mandates of the other mechanisms or that would more adequately be addressed by other bodies and agencies of the United Nations system, including the treaty bodies.
11. In the aftermath of the adoption of the United Nations Declaration, the Permanent Forum should review its working methods in order to promote cooperation with the other two mechanisms and enhance its responsibilities under article 42 of the Declaration. A greater role could be given to the Permanent

Forum's interaction with the United Nations agencies, including in public meetings, particularly those that carry out activities regarding the rights of indigenous peoples at the country level.

12. The sessions of the Permanent Forum and the Expert Mechanism should strive to focus the participation of Governments, indigenous representatives and other stakeholders on the specific issues and functions falling within their respective mandates.

#### Thematic research

13. The Expert Mechanism has a specific mandate to carry out thematic research. The Special Rapporteur has adopted the view that his role in thematic research will be secondary, contributing to the thematic research of the other mechanism on the basis of his experience engaging with Governments on country situations.

14. The Permanent Forum should reflect on its role in carrying out thematic research and avoid duplication of the work of the Expert Mechanism to prevent "thematic fatigue".

15. The Expert Mechanism and the Permanent Forum should seek to collaborate closely on research projects of shared interest. The participation of indigenous experts should always be promoted.

#### Specific situations of human rights violations

16. This is a priority area of work for the Special Rapporteur.

17. The Permanent Forum and the Expert Mechanism should develop measures to channel the specific allegations of human rights violations presented by indigenous peoples during their annual sessions, including to the Special Rapporteur and other relevant mechanisms mandated to address such allegations.

18. The Special Rapporteur should develop methodologies for receiving allegations of human rights violations and, as required, for direct dialogue between Governments and indigenous peoples, during his participation at the annual sessions of the Permanent Forum and the Expert Mechanism.

#### Country visits

19. Country visits to assess the human rights conditions of indigenous peoples is one of the principal work methods of the Special Rapporteur pursuant to his mandate.

20. The Permanent Forum has an important role to develop in relation to the work of the United Nations agencies and programmes at the country level, enhancing knowledge of indigenous issues among the different agencies.

21. The Permanent Forum should develop internal guidelines to orient the activities and scope of work carried out by its individual members during country visits.

22. The Permanent Forum's secretariat could seek methods of enhancing cooperation and information-sharing among the Forum's individual members in order to strengthen their roles and the effectiveness of their activities as members between sessions. The Forum's members should be actively involved in intersessional activities, including those carried out by the secretariat.

#### Role of the secretariats

23. The secretariat staff should periodically share information regarding the activities of the three mechanisms and the secretariats themselves, coordinate workplans regularly, and collaborate on research and other areas as appropriate.

24. The secretariats should enhance efforts for training of United Nations staff members on indigenous rights and issues at headquarters and in the field, in coordination with efforts made by the three mechanisms.

25. Where possible, more resources, both financial and human, should be dedicated to the secretariats. In particular, the secretariat of the Expert Mechanism needs to be strengthened considerably. Priority should be given to the recruitment of indigenous staff.

26. The secretariat of the Permanent Forum and the Office of the United Nations High Commissioner for Human Rights should consider utilizing the members of the Permanent Forum and the Expert Mechanism as resource persons in the elaboration of their own policies, guidelines and publications on indigenous issues.

### **Conclusions and recommendations of the Representative of the Secretary-General on the human rights of internally displaced persons**

88. On the occasion of the tenth anniversary of the adoption of the Guiding Principles on Internal Displacement, the Representative welcomes the progress made in the past 10 years towards greater recognition of the phenomenon of displacement caused by armed conflicts, situations of generalized violence, natural or human-made disasters and similar causes, and of the primary responsibility of national Governments to respond to such situations.

89. The Representative re-emphasizes that the Guiding Principles reflect international law and restate State obligations and responsibilities emerging from international humanitarian law and human rights law. He acknowledges the international recognition of the Guiding Principles as an important international framework for the protection of internally displaced persons and commends the efforts of States to promote the Guiding Principles and implement them through incorporation into their domestic laws and policies. He highlights the progress made on the African continent in shaping binding international treaties on internal displacement particularly the Protocol on the Protection and Assistance to Internally Displaced Persons to the Declaration on Peace, Security, Democracy and Development in the Great Lakes Region (the Great Lakes Protocol on internal displacement) and the draft African Union convention for the protection and assistance to internally displaced persons in Africa, which is expected to be adopted in 2009.

90. At the same time, the Representative regrets that over the past 10 years, the number of internally displaced persons - today estimated at 1 per cent of the world's population - has not declined. Rather, it continues to increase, primarily as a result of the growth in disaster-induced displacement related to climate change, but also because of protracted displacement in the context of unresolved armed conflicts.

91. It is estimated that more than 26 million people are currently internally displaced as a result of armed conflict or other violence in more than 50 countries, with the Sudan, Colombia, and Iraq having the highest numbers. Over the past year, some countries, such as Uganda, have made progress in facilitating the return and reintegration of IDPs. At the same time, massive new displacement as a result of armed conflict or generalized violence has occurred in the Democratic Republic of the Congo, Georgia, Kenya, Somalia, Sri Lanka, the Sudan, and the Philippines. Meanwhile, millions remain trapped in protracted displacement situations in countries and regions including Azerbaijan, the Balkans, Colombia, Georgia, Turkey, and Somalia, because the conflicts that gave rise to their displacement remain unresolved.

92. Many countries experience displacement caused by natural disasters. In light of the findings of the Intergovernmental Panel on Climate Change, it is expected that the frequency and magnitude of natural disasters will increase, resulting in more displacement.

93. The Representative continues to be concerned about:

- (a) Ongoing displacements in many countries, often as a result of violence committed by State and non-State actors in violation of international human rights law and international humanitarian law;
- (b) The large number of people who remain in situations of protracted displacement;
- (c) The frequent difficulties in facilitating durable solutions for internally displaced persons, which leave them in situations of deprivation, marginalization and poverty, in violation of their civil, cultural, economic, political and social rights;
- (d) The failure, in certain countries, of the political will or capacity to respond effectively to situations of displacement and to provide displaced persons with the necessary protection and assistance;
- (e) The increasing obstacles humanitarian agencies and organizations face in gaining access to IDPs, owing to restrictions imposed by Governments, as well as insecurity and even targeted attacks against humanitarian personnel, their supplies and means of transport;
- (f) The widespread impunity, in certain contexts, for acts of displacement amounting to crimes against humanity and war crimes, and the continued commission of such crimes against displaced persons;
- (g) The difficulties that international and local stakeholders face, in certain countries, in effectively coordinating their activities and obtaining the funds necessary to be reasonably effective.

94. Against this backdrop, the Representative recalls that in accordance with their obligations under international law, States have the primary duty and responsibility to prevent internal displacement, to protect and assist the displaced, and to provide them with durable solutions once the causes of displacement have ended. He calls on Member States to:

- (a) Reaffirm their commitment to the Guiding Principles, to create national and regional frameworks based on the Guiding Principles, and to develop the capacity and, perhaps most importantly, the political will to implement them in practice;
- (b) Draft national legislation and policies consistent with the Guiding Principles or to revisit existing norms to ensure that the needs of displaced persons receive an appropriate response, that institutional responsibilities are specified at all levels, and that the necessary capacities and resources to implement these responsibilities are made available;
- (c) Scrupulously respect their obligations under international human rights law, international humanitarian law and international criminal law, to refrain from any acts against internally displaced persons amounting to violations of these obligations, and to protect the displaced against violations of their rights by third parties;
- (d) Investigate, prosecute and punish crimes against humanity and war crimes causing internal displacement or committed against those who have been displaced;
- (e) Strengthen peace processes, in particular for “frozen” conflicts causing situations of protracted displacement, allow the displaced a voice in peace processes, and comprehensively address their rights, needs and interests in peace agreements;
- (f) Mainstream a human rights approach in national strategies for disaster preparedness, mitigation and adaptation to negative effects of natural hazards, to better protect the rights of affected persons, including those displaced;
- (g) Advocate for the protection of persons displaced by the effects of climate change to be addressed by current efforts to strengthen the normative framework on climate change.

95. The Representative calls on de facto authorities and armed groups to scrupulously respect their obligation under international humanitarian and criminal law, to refrain from all acts causing displacement or violating the rights of the displaced and to grant safe humanitarian access to agencies and organizations.

96. The Representative calls on Governments, humanitarian and development agencies, and donors to:

- (a) Ensure that return, or any other solution, is the result of an individual decision freely taken, without coercion, on the basis of adequate information;
- (b) Take all measures to facilitate the main elements prerequisite for durable solutions, in particular: (a) the assurance of physical safety during and after return or resettlement; (b) the restitution of property and the (re)construction of adequate housing and necessary infrastructure; and (c) the creation of an economic and social environment conducive to sustainability, including access, without discrimination, to public services, livelihoods and income-generating activities, the restitution or replacement of identity documents lost or destroyed during displacement, and the reinstatement of voting rights and other political rights;
- (c) Rigorously address these issues when drafting peace agreements and reconstruction plans following a conflict or natural disaster, in consultation with displaced persons;
- (d) More resolutely pursue early recovery strategies while carrying out humanitarian, peacebuilding and development activities, taking into account the specific characteristics of each situation;
- (e) Develop more appropriate funding mechanisms to bridge the gap between emergency phase funding and development phase funding, which now results in the systematic underfunding of early recovery activities. Funding mechanisms must be flexible enough to respond not only to the needs of IDPs themselves, but also to the needs of all displacement-affected communities - host communities as well as communities receiving returnees and resettling IDPs.

**Conclusions and recommendations of the Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the right of people to self-determination**

## A/HRC/10/14

## III. CONCLUSIONS

68. The Working Group expresses deep concern about the lack of regulation at the national and international level of the activities of private military and security companies which recruit and train thousands of citizens from all over the world, from developed and developing countries, to perform tasks in Afghanistan, Iraq or in other zones of armed conflict, and in post-conflict and low intensity conflict areas.

69. As the Working Group's interaction with Governments in the course of country visits shows, most Governments do not possess systematized information on which military and security companies are registered in their territory, and which companies originating from their country are registered abroad.

70. In conformity with the mandates of the General Assembly and the Human Rights Council to elaborate guidelines and principles for the regulation of private military and security companies, and ensuring the prevention of any violation by them of human rights norms, the Working Group, after consultation with many national Governments in the course of regional consultations and country visits, has come to the conclusion that legal codification of the comprehensive system of oversight and regulation for the private military and security industry should be based upon the following principles:

- (a) Respect by private military and security companies, as corporate bodies, and their employees, as natural persons, of universal human rights norms and international humanitarian law;
- (b) Respect by private military and security companies and their employees of the national law of the countries of origin, transit and operation;
- (c) Respect by all parties of the sovereignty of States, of internationally recognized borders and of the right of peoples to self-determination;
- (d) Non-participation by private military and security companies and their employees in any activities aimed at overthrowing legitimate governments or authorities, the violent change of internationally recognized borders or foreign taking control by force of natural resources;
- (e) Guaranteeing only authorized methods of acquiring, exporting, importing, possessing and using weapons by private military and security companies and their employees;
- (f) Guaranteeing that only adequate, mandated and proportional use of force is allowed;
- (g) Restraint in the use of weapons generally and a total prohibition on the use of weapons of mass destruction, or weapons resulting in overkill, mass casualties or excessive destruction;
- (h) Accountability of private military and security companies to the Government of their country of origin and registration, and their country of operation;
- (i) Adequate public transparency of private military and security companies;
- (j) A mechanism of detailed registration of private military and security companies;
- (k) A mechanism of licensing of private military and security companies' contracts for operation abroad;
- (l) A mechanism of monitoring inquiries, investigations, complaints and allegations regarding the activities of private military and security companies;
- (m) A mechanism of sanctions which may be applied nationally and/or internationally to private military and security companies in the case of violations;
- (n) A mechanism of self-regulation of private military and security companies through providing for enforcement of industry codes of conduct and allowing the monitoring of activities of private military and security companies by national associations of such companies. Although not sufficient if considered alone, such a mechanism of self-regulation still can and should be part of a broader, binding and compulsory system of regulation.

71. Lessons can be learned from some best practices in the field, such as export control, arms licensing, arms control verification mechanisms and the experience of the United Nations Register on Conventional Arms. These should be taken into consideration while elaborating regulations for the export of military and security services.

72. The Working Group believes that the International Convention against the Recruitment, Use, Financing and Training of Mercenaries remains an important international legal instrument for the prevention of the use of mercenaries as a means of violating human rights and the rights of peoples to self-determination. The Working Group strongly recommends to those countries that have signed but not yet ratified the Convention to do so as soon as possible, and to those countries which are not yet party to the Convention to consider acceding to it.

73. One of the main conclusions of the Working Group is that the activities of private military and security companies cannot be regulated only on the basis of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, even after any potential amendment. Rather, a new international legal instrument in the format of a new convention on private military and security companies should be elaborated and adopted by the United Nations.

74. Such a convention is potentially to be supplemented by another legal instrument, a model law on regulating private military and security companies, which will assist Governments in the elaboration and adoption of legislation on the national regulation of such companies.

#### IV. RECOMMENDATIONS

75. The Working Group recommends that Governments consider the creation of a separate national register for military and security companies with comprehensive information on each company, and preferably the prohibition, by national regulation, of the registration of companies operating in the field of military and security services in off-shore “minimal transparency” zones.

76. The United Nations system might consider extending the existing mechanism of the United Nations Register of Conventional Arms to cover export and import of major military and security services, at least those involving the possession and use of lethal arms, and require nations to include data on State contracts on exporting and importing military and security services into the set of data submitted annually to the Register.

77. The Working Group recommends that in addition to more rigid and detailed national registration of private military and security companies, the setting up of an open international register of private military and security companies would constitute an important step in regulating their activities. This register could be based on the experience of other registers (such as the Register of Conventional Arms) set up at the international level, and would require the adjustment of national regulations regarding registration of military and security companies within each State.

78. Furthermore, the Working Group is of the view that in order for there to be effective implementation of any private military and security industry regulation, accountability mechanisms should also be put in place to ensure that such a regime is enforceable. Obligatory transparency criteria for private military and security companies are to be formulated, which may require private military and security companies to submit annually data on their current corporate structure, contracts and operations. Whilst domestic criminal jurisdictions could be in charge of enforcing regulations, other mechanisms could be put in place to ensure accountability of individuals and companies providing security or military services, such as a vetting mechanism of the employees of private military and security companies and mandatory human rights and legal training for them.

79. In principle, the export of military and security services, even military consultancy and training services, should be placed within a category similar or comparable to the export of arms or military equipment. States could be required to report regularly to the United Nations on contracts over a certain size for both outgoing and incoming military and security services.

80. Issuance of a licence might require training of employees on international humanitarian law and human rights, as well as vetting of new and existing employees, including both national and international criminal checks. Thus, a human rights abuses prevention regime would be built into the general export criteria for the military and security services industry.

81. In addition to a monitoring mechanism, a complaint mechanism open to individuals, State agencies, foreign Governments and other companies and entities should also be put in place to ensure criminal responsibility of individuals and civil liability of companies.

82. Member States may also legally define the types of activities in the military and security field which under no circumstances could be outsourced by a State to the private sector, for example gaining access to weapons of mass destruction, declaration of war or armed invasion. National legislation on the private military and security industry should clearly list the types of activities prohibited for nationally registered companies, including mercenary-related activities banned by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, or participating in overthrowing legitimate governments and political authorities.

83. The Working Group recommends that parliamentary oversight of private military and security companies must be established at the State level and could involve regular parliamentary hearings, inquiries and investigations. In States exporting security and military services, a specific committee, subcommittee or commission could be created within the national parliamentary structure, aimed at scrutinizing the issuance of licences and monitoring and investigating the actual activities of private military and security companies.

84. In order to implement the General Assembly and Human Rights Council mandates regarding the creation of new legal instruments to fill the gaps in existing legislation, it is recommended to create in due time, when the Working Group on mercenaries will finalize its range of consultations on drafting legal instruments, an intersessional intergovernmental open-ended working group within the United Nations framework, consisting of representatives and experts nominated by States, with the task to elaborate and submit to the General Assembly for approval a new international convention on the regulation of private military and security companies and, possibly, a complementary model law to be used as a model for national legislation on the private military and security industry.

85. The Working Group finally recommends that the approach of the international community to private military and security companies should move away from perceiving them as part of a State's regular exports under commercial regulations towards perceiving them as a highly specific field of exports and services requiring supervision and constant oversight by or on behalf of national Governments, civil society and the international community, led by the United Nations. Both Governments and the United Nations system must take greater responsibility for what, private military and security companies are doing worldwide, and where and how they operate.

### **Conclusions and recommendations of the Special Rapporteur on human rights of migrants**

#### **A/HRC/11/7**

81. The Special Rapporteur highlights the importance of an adequate legal framework for the protection of the rights of all children in the context of migration, including through ratification of relevant international human rights and other instruments and their translation into national laws and policies, and wishes to make a number of recommendations for further consideration and action. Mainstreaming a child rights-approach to migration into national plans, programmes and policies

82. All policies and programmes aimed at addressing the situation of children in the context of migration should have a human rights-based approach and be based on fundamental principles, such as the best interest of the child, non-discrimination and the right of the child to be heard in all decisions that concern him or her.



83. States are encouraged to consider the impact of migration on children in the elaboration and implementation of national development frameworks, poverty reduction strategies, human rights plans of action,<sup>45</sup> programmes and strategies for human rights education and the advancement of the rights of the child. States are also encouraged to adopt and develop programmes and policies to address significant gaps remaining in social policies and other areas where the protection of the migrant child is yet to be mainstreamed.

#### Protecting the most vulnerable

84. Effective protection of the human rights of the child should be ensured in States of origin, transit and destination at every stage of the migration process and in all migration management procedures.

85. States, especially those of transit and destination, should devote special attention to the protection of undocumented, unaccompanied and separated children, as well as to the protection of children seeking asylum and children victims of transnational organized crime, including trafficking in persons, smuggling, sale of children, child pornography and child prostitution.

86. States should also consider the specific vulnerability of the migrant girl child and the gender impact of migration and human rights implications for girls and boys of any migration-related planned action, including legislation, policies and programmes, and address existing gaps in protection.

87. Migration policies, programmes and bilateral agreements should preserve family unity, including by facilitating family reunification and interaction among family members.

#### Information-sharing, data and analysis

88. States should strengthen efforts to collect data and measure the impact of migration on children in countries of origin, transit and destination, with due regard for the opportunities and challenges for children in all stages of the migration process.

89. States are especially encouraged to share across boundaries and regions information about key indicators of the impact of migration on children, as well as common challenges and best practices to address migrant children protection-related gaps at all levels. It is also important that stakeholders contribute to make available statistical and substantive information on, inter alia, the root causes of migration of children and adolescents (with family members or unaccompanied), to help States to identify policy gaps.

#### Protecting children left behind in countries of origin

90. The Special Rapporteur recommends that the situation of children staying behind in countries of origin be included in the agenda of international debates and forums on migration issues and that all relevant actors undertake further studies to better understand the impact of migration processes on the well-being and enjoyment of human rights of the children left behind in countries of origin.

91. The Special Rapporteur recommends the compilation and sharing of best practices in addressing the situation of children left behind in countries of origin, especially in the area of education.

92. States should develop public policies to address the situation of children left behind in countries of origin, taking into account the best interest of the child as a guiding principle and ensuring the participation of these children in the design and implementation of those policies.

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<sup>45</sup> For guidance on national human rights plans, see the Handbook on National Human Rights Plans of Action, 2002, available at the OHCHR website [www.ohchr.org](http://www.ohchr.org).

93. The Special Rapporteur encourages States to develop public policies to prevent the irregular migration of children and undertake public information campaigns in communities of origin to alert them to the dangers of irregular migration and to inform them of the existing protection mechanisms.

#### Protecting children on the move

94. The Special Rapporteur encourages the collection of data at the national level and the preparation of studies and research on unaccompanied or separated children.

95. States should recognize that general comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children provides useful guidance for the protection of the rights of unaccompanied migrant children.

96. States should recognize that migrant children, especially those unaccompanied, are most exposed to the worst forms of child labour and, in this context, recalls the relevance of the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) and relevant Recommendation No. 190 and their implementation framework.

97. The Special Rapporteur encourages the conclusion of bilateral and multilateral agreements based on existing international human rights norms and standards and increased cooperation at the regional level to protect migrant children, especially those unaccompanied, including in matters of safe repatriation, the fight against trafficking, sexual exploitation and smuggling and assistance to victims. The Special Rapporteur also encourages consular services to continue ensuring respect for the rights of the child in the context of return of migrant children.

98. The Special Rapporteur encourages the establishment and implementation of institutionalized services and programmes to provide comprehensive support and protection to migrant children, especially those unaccompanied, including means to detect those who are in need of international protection. Protection services should include access to food, health, legal advice; support for return to the community of origin; professional and vocational training; and the search for durable solutions in the case of refugee children.

99. The Special Rapporteur recommends that protection programmes include reproductive sexual health awareness and training to address psychological trauma.

100. The Special Rapporteur encourages the design and implementation of programmes for the sustainable return and reintegration of children, including alternatives to return on the basis of the best interest of the child.

101. The Special Rapporteur recommends the development of standardized procedures to ensure access to asylum procedures for unaccompanied migrant children who cannot return to their countries of origin because their life, safety or freedom are at risk, and to ensure an assessment of the situation in the country of origin or habitual residence of the children before deciding on their repatriation.

102. The Special Rapporteur recommends that migration officials be trained, including on the rights of the child and cultural sensitivities. States should ensure that age-assessment processes comply with international standards and that the persons concerned are allowed access to effective remedies to challenge age-assessment decisions. States should also consider according the benefit of the doubt in age-determination procedures.

#### Protecting children deprived of liberty because of their migratory status or that of their parents

103. States should recognize the need to comply with and implement the provisions contained in the Convention on the Rights of the Child and all relevant human rights instruments.

104. States should recognize that all practices and norms implying a restriction or a deprivation of liberty of children in the context of migration must respect minimum standards as defined in international human rights instruments.

105. The Special Rapporteur recalls that, as provided in article 37 of the Convention on the Rights of the Child, detention of children should be a measure of last resort and should only be taken for the shortest period of time possible. He also recalls that deprivation of liberty of children in the context of migration should never have a punitive nature.

106. The Special Rapporteur furthermore recalls that migrants should not be deprived of liberty as a sole consequence of their migratory status and that, according to general comment No. 6 of the Committee on the Rights of the Child, as a general rule, unaccompanied migrant children should not be detained.

107. The Special Rapporteur encourages States to provide alternatives to detention for the family group when parents are detained on the sole basis of migratory status, keeping in mind the necessary balance between the need to protect family unity and the best interest of the child. Exceptional migration-related detention of children should be done in places ensuring the integral protection and well-being of the child, taking due consideration for the fulfilment of the child's rights to education, health care, recreation, consular assistance and legal representation, among others.

108. States should bear in mind that children should be kept separate from adults, or when housed with families, they should have accommodation distinct from other adults.

109. The Special Rapporteur recalls that the causes and circumstances leading to the deprivation of liberty of migrant children should be previously defined by law and provide for adequate and effective remedies, including judicial review, in order to avoid arbitrary detention and guarantee access to legal services.

110. The Special Rapporteur recommends the development of alternatives to deprivation of liberty, such as sheltered housing and alternative care with national child protection services.

111. The Special Rapporteur recalls that irregular migration should not be criminalized and migrants, especially children, should not be detained in penitentiaries or facilities for criminal detention, and they should have, *inter alia*, the right to legal advice, an interpreter, legal review, to have contact with the external world as well as access to education and health services.

112. The Special Rapporteur encourages States to define the regime to be applied in the case of migrants with premises, to avoid arbitrariness and the application of a penitentiary regime.

113. States should recognize the need to allow independent scrutiny and control mechanisms of the conditions of detention of children (judicial authorities, international and local non-governmental organizations, international human rights mechanisms, consular services), and recognize the role played by civil society and local communities in addressing this and other issues concerning the protection of migrant children.

114. States should recognize the important role played by consular offices in the protection of migrant children, and those offices should share good practices and strengthen cooperation.

115. States should pay special attention to the training of officials working with separated and unaccompanied children and dealing with their cases. States should ensure that all immigration officials in contact with children are aware of the principles and provisions of the Convention on the Rights of the Child.

116. States should recognize the need to allocate sufficient resources, including budgetary resources, to institutions and programmes working with migrant children deprived of their liberty.

117. State authorities should ensure that private companies in charge of managing detention facilities act in conformity with international human rights standards.

#### Protecting children in countries of destination

118. States should protect and respect the human rights of migrant children, irrespective of their migration status, including the rights to basic social services for all children, in particular the rights to food, health, education and an adequate standard of living, as well as access to justice. Dialogue and cooperation between Governments of States of origin and those of destination is highly encouraged, to ensure the fulfilment of these rights.

119. The Special Rapporteur recommends the development of strategies to pay special attention to migrant children in order to guarantee their access, on an equal basis and regardless of legal status, to the same rights as those of children nationals of the country concerned.

120. The Special Rapporteur encourages States to take effective measures to guarantee the birth registration of children born outside their parents' country of origin and to uphold the principle of avoiding statelessness, and highlights the importance of harmonizing migration policies with public policies concerning childhood, adolescence and the family.

121. States should recognize the importance of strengthening institutes for the protection of children and adolescents, including by increasing their budgets.

122. The Special Rapporteur recommends that Governments in countries of transit and destination encourage greater harmony, tolerance and respect among migrants, asylum-seekers, refugees and the rest of society, with a view to eliminating acts of racism, xenophobia and other forms of related intolerance directed against migrants. States that have not eliminated the general barriers to the enjoyment of human rights by migrant children and their families, especially those encountered by children who are undocumented or have an irregular status, should do so.

123. States should base any decision to return a child or its parents to the country of origin on the best interests of the child, including the right to family unity.

124. The Special Rapporteur recommends that inter-institutional and intersectoral coordination in all countries be strengthened with a view to protecting children from all forms of exploitation, including commercial sexual exploitation.

125. States should recognize the need to protect child victims of transnational organized crime, including trafficking, as well as of violence and traumas related to migration, through the implementation of standards that guarantee their protection and access to medical, psychosocial and legal assistance.

126. States should also promote regularization programmes with a view to preventing human rights violations and abuses associated with irregular migration, and take into consideration the fact that regular migration status facilitates the integration of migrant children in the communities of destination.

#### Strengthening partnerships and international cooperation

127. The Special Rapporteur encourages special procedures and treaty bodies, especially the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to continue to pay special attention to the rights of migrant children. The Special Rapporteur encourages the synergy of capacities and mandates of international organizations as a key element in supporting States to fulfil their respective obligations under international instruments. To the extent possible and when appropriate, policymaking discussions on migration should be built upon existing international policy

platforms, composed by Member States, key institutions and civil society organizations with relevant mandates and competencies.

128. The Special Rapporteur encourages inter-institutional coordination at the national level, including through specific mechanisms and with the participation of civil society, consular services, local governments and the private sector, for the development and implementation of multidisciplinary policies to ensure the protection of the rights of children in the context of migration.

### Conclusions and recommendations of the Independent Expert on minority issues

#### A/HRC/10/11 and A/HRC/10/11 Add.1

#### **The Special Rapporteur has not issued any recommendations in her annual report to the Council.**

In 2009 the IE produced an annual report which contained a summary of her activities and a thematic section on minorities and the right to education. The report contained no recommendations as such. Resolution 6/15 of the Human Rights Council requires the IE to guide the work of the Forum on Minority Issues and prepare its annual sessions. In its 2008 session the Forum focused on the issues of minorities and the right to education. The IE is also required to report the recommendations of the Forum to the HRC in her annual report. In 2009, the IE included a background paper on this issue in her annual report and the recommendations of the Forum were contained in Addendum 1 of her report.

### Conclusions and recommendations of the Special Rapporteur on racism

#### A/HRC/11/36

48. The Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference provide the most comprehensive frameworks for the fight against racism. The main challenge lies in the implementation of these two documents. The Special Rapporteur strongly recommends that Member States formally establish specific implementation mechanisms that will allow for adequate implementation of the pledges that they made in the Durban Review Conference. In particular, the Special Rapporteur recommends that Member States adopt concrete targets and yardsticks for the implementation of the outcome document.

49. The Special Rapporteur strongly recommends that the countries that did not participate in the Durban Review Conference publicly acknowledge their support for its outcome document and commit to its implementation.

50. With regard to the issue of incitement to racial or religious hatred, the Special Rapporteur recommends that the constructive agreement reached in the outcome document of the Durban Review Conference be seen as the basis for further understanding of the thresholds established by article 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention for the Elimination of All Forms of Racial Discrimination, including in the series of regional seminars that will be organized by OHCHR.

51. The Special Rapporteur invites Member States to adopt a comprehensive approach to tackle the problems related to the overlap of poverty and race or ethnicity prevalent around the world. In particular, the Special Rapporteur recommends that Member States review and redesign policies and programmes that may have a disproportionate effect on racial or ethnic minorities in view of their socio-economic

vulnerability, and implement effective measures to improve the access of such groups to civil, cultural, economic, political and social rights.

52. As a key prerequisite of any action aimed at tackling the socio-economic vulnerability of persons belonging to ethnic or racial minorities, the Special Rapporteur recommends that States collect ethnically disaggregated data and indicators that allow for the identification of the main problems these groups face and inform policymaking in this regard. The principles of privacy, self-identification and involvement of all communities in such data-gathering activities should be respected at all times.

53. The Special Rapporteur recalls the overarching and cornerstone prohibition of discrimination on national, racial, ethnic or religious grounds according to international human rights law, and strongly recommends that States review legislation and policies that may directly or indirectly discriminate against particular groups.

54. In order to redress the historical imbalances created by racism and discrimination, including slavery, segregation, apartheid and other forms of exclusion, the Special Rapporteur recommends that Member States take special measures to foster integration of racial or ethnic minorities into education, health, housing, the workplace and other areas.

**Conclusions and recommendations of the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on the manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights by their followers**

**A/HRC/11/36**

43. The Special Rapporteur welcomes the important developments that have occurred in the last year on the issue at hand. He recalls the recommendation of his predecessor (A/HRC/9/12, para. 65) that the Human Rights Council should “encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non incitement to national, racial or religious hatred, on the basis of the legal provisions laid down in international human rights instruments, in particular articles 18 to 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination”.

44. In addition, the Special Rapporteur would like to highlight the initiative of the High Commissioner for Human Rights in organizing an expert seminar on the topic, which helped to further clarify the contours of this debate and set some important ideas for the future. He also would like to express his support for the idea of the High Commissioner that a series of expert workshops be held in order to attain a better understanding of legislative patterns and judicial practices in the different regions of the world, reflecting the various legal systems and traditions with regard to the concept of incitement to racial or religious hatred as contained in article 20 of the International Covenant on Civil and Political Rights, and to arrive at a comprehensive view of the state of implementation of the prohibition of incitement (A/CONF.211/PC.4/5, para. 58, which is also reaffirmed in the outcome document of the Durban Review Conference, para. 134).

45. The Special Rapporteur believes that the agreement reached in the outcome document of the Durban Review Conference constitutes a fine balance in reaffirming the importance of freedom of expression and highlighting the need to curb hate speech. He therefore recommends that this consensual document be used as a reference in the way forward when approaching difficult questions such as that of incitement to racial or religious hatred. He particularly recommends that policymakers rely on the robust and adequate language of the outcome document and implement it domestically.

46. With regard to the above-mentioned reports sent to the Special Rapporteur (see paragraphs 21-24), a distinction should be made between the following four concerns: (a) intolerant mentalities which do not yet constitute human rights violations, but may eventually lead to such violations; (b) advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence and which is prohibited

in international human rights law; (c) discrimination against members of religious or belief communities which is also clearly prohibited by international human rights standards and which adversely affects the enjoyment of civil, cultural, economic, political and social rights; and (d) acts of violence perpetrated against members of religious or belief communities which constitute a blatant human rights violation, for example with regard to the right to security of the person or ultimately to the right to life.

47. The Special Rapporteur would like to reiterate his predecessor's recommendation that the Human Rights Council invite Governments, in combating racial and religious discrimination, as well as incitement to racial or religious hatred, to fully comply with their obligations in relation to freedom of expression and freedom of religion or belief, in keeping with the relevant international instruments and in particular articles 18, 19 and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, having due regard to their interrelatedness and complementarity.

48. In this regard, the Special Rapporteur would like to recall that existing international standards already address racial and religious discrimination, as well as incitement to racial or religious hatred. In this regard, he would like to highlight that, as of June 2009, a total of 164 States have ratified the International Covenant on Civil and Political Rights and that there are 173 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination. He calls upon States which have not yet ratified these international instruments to consider doing so.

49. The Special Rapporteur highlights that, while the obligation to prohibit discrimination and incitement to racial or religious hatred is unambiguous under international human rights law, this is only one among a number of actions that need to be implemented in order to fully guarantee the right to equal treatment and to fight racism and all forms of discrimination. In this regard, under the International Convention on the Elimination of All Forms of Racial Discrimination, States have a central obligation to adopt measures that will foster tolerance and respect for cultural diversity, including religious diversity. It is only by implementing this wide array of actions that States will be able to secure long-term defences against the insidious implications of hate speech.

50. Finally, the Special Rapporteur recommends that strong emphasis be put on the implementation of the core obligations of States relating to the protection of individuals and groups of individuals against violations of their rights incurred by hate speech. Cases of incitement to racial or religious hatred are of serious concern and need to be addressed promptly within the existing international human rights framework. He also would like to remind States of their obligation under existing international human rights standards to protect members of religious or belief communities from violation of their right to freedom of religion or belief.

### **Conclusions and recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

#### **A/HRC/12/21**

##### *A. Conclusions*

89. The questionnaire responses from Member States demonstrate that bonded labour has received limited attention in national legislation. This is because bonded labour is perceived to exist either in traditional, rural settings, or not at all. There is a lack of awareness and understanding of the new subtle, emerging forms of bonded labour.

90. Despite the fact that forced labour mostly involves private agents, it is the responsibility of the State to enact legislation and policies to combat forced labour and protect the victims.

91. It is not only important that a country has legislation to combat forced labour, but that the legislation is enforceable. Studies also show that where countries have introduced legislation to combat forced labour, the legislation has been difficult to enforce.<sup>46</sup>

92. It is encouraging to note that countries like India, Pakistan and Brazil have been able to successfully enforce the existing laws against bonded labour. The Government of India has indicated that it gives priority to the identification, release and rehabilitation of bonded labourers. Figures from India for 2008 show 5,893 prosecutions and 1,289 convictions under the 1976 Bonded Labour System Abolition Act. In Pakistan, in accordance with 1992 legislation, judicial action has been taken to release bonded labourers and in 2006 the Government of Brazil released 3,266 bonded labourers in Brazil.<sup>47</sup>

93. In recent years much attention has been rightly paid to trafficking in human beings. Important United Nations and regional legal instruments have been developed, such as the United Nations Convention on Transnational Organized Crime and its Trafficking Protocol. The documents, signed by a large number of States, call for parties to use criminal sanctions to punish trafficking and to develop policies to prevent trafficking and protect trafficking victims. There are currently steps in place to develop monitoring mechanisms for the United Nations Convention. Regional trafficking instruments such as the South Asian Convention against Trafficking of the South Asian Association for Regional Cooperation and the Council of Europe Convention on Action against Trafficking have also been developed. States have also taken significant steps to combat trafficking which have resulted in many victims being released from this slavery-like practice. Trafficking in human beings is also addressed in other United Nations treaties such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

94. ILO estimates that about 20 per cent of all forced labour is an outcome of trafficking. According to the replies from Member States, on the other hand, instances of forced labour occur only as a result of trafficking. Forced labour which may occur in the informal sector, in supply chains and export processing zones, within indigenous or minority populations and in rural areas - the other 80 per cent - was not addressed. Statistics show that of those trafficked into forced labour, 43 per cent are trafficked for commercial sexual exploitation, 32 per cent are trafficked for economic exploitation, and the remaining 25 per cent are trafficked for mixed or undetermined reasons.<sup>48</sup>

95. Unlike the attention devoted to trafficking, the international efforts to sign, ratify, enforce and monitor the slavery conventions<sup>49</sup> pale in comparison. This despite the fact that there are 27 million enslaved people worldwide.<sup>50</sup> Given the gravity of the human rights violations associated with such forms of slavery as bonded labour and the millions of people affected by such practices in every part of the world, it is important that the forms of slavery defined in the 1926 Convention and the 1956 Supplementary Convention be given their due prominence and attention.

### *B. Recommendations*

96. Forced labour and bonded labour constitute human rights violations that put a person in a condition of slavery, which is a crime under international law. Human rights need to be mainstreamed in development programmes set up to address the root causes of slavery. Such programmes include those on poverty reduction, employment empowerment programmes, microcredit, and agricultural programmes including land privatization and cultivation. Immigration and foreign employment programmes should also put human rights at the centre of their work.

97. Throughout the years, ILO has done tremendous work to eliminate forced labour, though programmes and actions addressing bonded labour as a separate crime and form of slavery are still

<sup>46</sup> *A global alliance against forced labour*, op. cit.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> The 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

<sup>50</sup> See Kevin Bales, *Ending Slavery: how we free today's slaves*, University of California Press, Berkeley and Los Angeles, 2007.



insufficient. Complementing the actions that have been undertaken by ILO by bringing in a strong human rights perspective will make the impact holistic and strong.

98. In the area of prevention of bonded labour, the Special Rapporteur recommends the following:

- Nationwide awareness campaigns should be developed on causes and consequence of bonded labour.
- Protection and promotion of the rights of victims of bonded labour should be part of the educational programmes on forced labour. These training programmes should be delivered to State and non-State actors.
- Research needs to be developed on bonded labour with regard to its links to land reform, the impact of privatization programmes, access to microcredit, labour migration policies, and immigration and foreign labour recruitment policies. This research should contain gender- and age-specific data.
- All the development programmes should be carefully audited from the perspective of human rights protection and inclusion.
- Policies and practices should be developed to ensure the effective access of vulnerable people to their rights to education, health, food, land and secure employment.
- Businesses should include human rights principles, including provisions on the prevention of and protection against forced labour, in all contracts with joint venture partners, suppliers and subcontractors. Businesses should apply human rights through their entire business supply chains.

99. With regard to the prosecution of violators and the protection of the rights of victims of forced labour (including bonded labour), the Special Rapporteur recommends the following:

- Specific legislation with regard to bonded labour also needs to be developed. This needs to be done alongside the establishment of compensation schemes and reintegration programmes for those who suffered from this crime.
- National legislation should view forced labour in a global context incorporating criminalization of different forms of forced labour not limited to trafficking in human beings and specifically including bonded labour and other slavery-like practices.
- Existing legislation on forced labour should be enforced and bonded labour should be criminalized; compensation schemes should be sought for those who suffered from that crime.
- Stronger guidelines and policing of labour agents, e.g. domestic labour agencies and construction labour contractors, and of marriage brokers and small industries in remote areas, should be developed.
- Monitoring mechanisms should be developed for employment agencies and their supply chains to detect and combat bonded labour.
- Cooperation should be established between the labour inspection services, law enforcement agencies, other State agencies and NGOs that have professional competence in the area.
- Programmes should be developed by States to protect and restore the rights and dignity of persons who are victims of forced and bonded labour. These programmes should include well-thought-out rescue and rehabilitation programmes, establishment of shelters for victims, and complex programmes for long-term sustainable rehabilitation and restoration of dignity.

- Cooperation among States, specifically on the situation of migrant domestic workers, is important. Bilateral and multilateral agreements between States, labour agencies and/or trade unions should be developed.
- Outreach and direct support programmes should be developed to address specific situations of risk.
- International agencies and NGOs working to maximize the impact of development or technical assistance programmes in the field and address the issues of forced and bonded labourers should enhance cooperation and coordination.

### Conclusions and recommendations of the Independent Expert on human rights and international solidarity

A/HRC/12/27

#### CONCLUDING REMARKS

40. In the current state of the world, troubled by turbulence in all its forms, international solidarity is a supreme precondition to human dignity, which is the basis of all human rights, human security and survival for our common future. International cooperation, the core of international solidarity, is well established in international law. Towards the recognition of a right of peoples and individuals to international solidarity, there is fertile terrain to be explored further, exemplified by a plurality of laws and processes, public policies and multilateral and bilateral arrangements that can be purposively interpreted in the light of justice, equity and sustainable development.

41. Having explored the legal ground, the independent expert concludes that there is ample and unequivocal evidence of the existence of a principle of international solidarity. A survey of the field of international solidarity shows the existence of numerous global public values, policies, concepts and norms in various international instruments of law and policy, mostly in the realm of soft law, *lex ferenda* or international public policy, where law, ethics, ideals, morals and politics meet. This constitutes a body of values and laws that can support the construction of a normative framework for human rights and international solidarity, and the concomitant emergence of a right of peoples and individuals to international solidarity, based on the underlying principle of consensus, which guides the making of international law. To a lesser extent, there is also a substantially harder body of law with binding obligations of international solidarity and cooperation. To support both soft and hard laws, there is a formidable body of State and non-State practice in acting upon such obligations. Gaps need to be bridged between soft and hard law, values and norms, through a diversity and plurality of legal processes and broader approaches to interpretation, recognizing that global governance depends on a number of stakeholders who all contribute to the making of international law and policy.

42. The typology of obligations to respect, protect and fulfil is a useful framework to interpret provisions on international cooperation and solidarity. International cooperation and solidarity are based on the concept of shared responsibility. The notion of common but differentiated responsibilities has potential value in the development of a right of peoples and individuals to solidarity. It may be argued that obligations based on international solidarity, where they concern the most fundamental human rights, can go beyond the limits of State borders, as they are owed *erga omnes* rather than *inter partes*.

### Conclusions and recommendations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

## A/HRC/10/3

A. *Conclusions*

64. The increased powers of intelligence services to conduct measures that seriously interfere with individuals' rights, as well as the increasing relevance of intelligence for legal and administrative actions, make it essential that adequate accountability mechanisms are put in place to prevent human rights abuses. Under international human rights law, States are under a positive obligation to conduct independent investigations into alleged violations of the right to life, freedom from torture or other inhuman treatment, enforced disappearances or arbitrary detention,<sup>51</sup> to bring to justice those responsible for such acts, and to provide reparations where they have participated in such violations. States retain this positive obligation to protect human rights where they grant privileges within their national territory to another State, including to intelligence services.

B. *Recommendations*

For legislative assemblies

65. The Special Rapporteur recommends that any interference with the right to privacy, family, home or correspondence by an intelligence agency should be authorized by provisions of law that are particularly precise, proportionate to the security threat, and offer effective guarantees against abuse. States should ensure that competent authorities apply less intrusive investigation methods than special investigation techniques if such methods enable a terrorist offence to be detected, prevented or prosecuted with adequate effectiveness. Decision-making authority should be layered so that the greater the invasion of privacy, the higher the level of necessary authorization. Furthermore, in order to safeguard against the arbitrary use of special investigative techniques and violations of human rights, the use of special investigative techniques by the intelligence agencies must be subject to appropriate supervision and review.

66. There should be a domestic legal basis for the storage and use of data by intelligence and security services, which is foreseeable as to its effects and subject to scrutiny in the public interest. The law should also provide for effective controls on how long information may be retained, the use to which it may be put, and who may have access to it, and ensure compliance with international data protection principles in the handling of information. There should be audit processes, which include external independent personnel, to ensure that such rules are adhered to.

67. The Special Rapporteur also recommends the adoption of legislation that clarifies the rights, responsibilities, and liability of private companies in submitting data to government agencies.

68. Parliamentary oversight committees, ad hoc parliamentary inquiry committees, royal commissions, etc. should have far-reaching investigative powers, access to the archives and registers, premises, and installations of the executive and the agency, in order to fulfil their domestic oversight function. These bodies should also be able to proactively investigate the relationship of a domestic agency with a particular State or service, or all exchanges of information with foreign cooperating services pertaining to a particular case. After their inquiry these bodies should produce simultaneously a confidential report for the executive and a separate report for public disclosure.

69. The Special Rapporteur supports the recommendation of the Eminent Jurist Panel on Counter-Terrorism, Terrorism and Human Rights that intelligence agencies should not perform the functions of law enforcement personnel.<sup>52</sup> If, despite the potential for abuse, intelligence services are nonetheless accorded powers of arrest, detention and interrogation, the Special Rapporteur urges that they be under the strict and

<sup>51</sup> *Aydin v. Turkey* (1997) 25 ECHR 251; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 5, 6, 12 and 13; Human Rights Committee, general comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, paras. 15 and 18.

<sup>52</sup> Eminent Jurist Panel on Counter-Terrorism, Terrorism and Human Rights, 2009, forthcoming report, chapter IV, part 5.

effective control of ordinary civilian authorities and operate with full respect for international human rights law.

70. Intelligence cooperation must be clearly governed by the law (including human rights safeguards) and by transparent regulations, authorized according to strict routines (with proper “paper trails”) and controlled or supervised by parliamentary or expert bodies.

For the executive power

71. The executive should have effective powers of control, provided for in law, over the intelligence agencies and have adequate information about their actions in order to be able to effectively exercise control over them. The minister responsible for the intelligence and security services should therefore have the right to approve matters of political sensitivity (such as cooperation with agencies from other countries) or undertakings that affect fundamental rights (such as the approval of special investigative powers, whether or not additional external approval is required from a judge).

72. The Special Rapporteur urges all relevant authorities of countries that have allegedly participated in extraordinary renditions, torture, disappearances, secret detentions or any other serious human rights violation to investigate fully any wrongful acts of intelligence agencies committed on their territory. States must ensure that the victims of such unlawful acts are rehabilitated and compensated. States must also stop transferring anyone to the custody of the agents of another State, or facilitating such transfers, unless the transfer is carried out under judicial supervision and in line with international standards.

73. The Special Rapporteur recommends that States insert a clause in their intelligence-sharing agreements which makes the application of an agreement by a party subject to scrutiny by its review bodies and which declares that the review bodies of each party are competent to cooperate with one another in assessing the performance of either or both parties.<sup>53</sup>

For intelligence agencies

74. The Special Rapporteur recommends that classified information may be shared with other intelligence agencies only when it contains a written caveat, which limits the further distribution of such information among other governmental agencies in the receiving State, such as law enforcement and immigration agencies, which have the power to arrest and detain a person. In this regard, the Special Rapporteur advises that sanctions against a person should not be based on foreign intelligence, unless the affected party can effectively challenge the credibility, accuracy and reliability of the information and there are credible grounds to believe that the information is accurate and reliable.

75. The Special Rapporteur urges Member States to reduce to a minimum the restrictions of transparency founded on concepts of State secrecy and national security. Information and evidence concerning the civil, criminal or political liability of State representatives, including intelligence agents, for violations of human rights must not be considered worthy of protection as State secrets. If it is not possible to separate such cases from true, legitimate State secrets, appropriate procedures must be put in place ensuring that the culprits are held accountable for their actions while preserving State secrecy.

76. The Special Rapporteur recommends that intelligence agencies develop internal and international training programmes in how to comply with human rights in their operations. Such training should be based on the idea that compliance with human rights is a part of professional qualifications, and a source for professional pride, for any intelligence officer.

77. A codified regulation should be in place which guarantees appropriate support and security for whistle-blowers within the intelligence agencies.

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<sup>53</sup> See C. Forcese, *The Collateral Casualties of Collaboration - the Consequence for Civil and Human Rights of Transnational Intelligence Sharing*, conference paper for the DCAF workshop on accountability of international intelligence cooperation, Oslo, 17 October 2008.

For the Human Rights Council

78. The Special Rapporteur recommends the elaboration and adoption of an instrument such as guidelines for human rights compliance and best practice by intelligence agencies.<sup>54</sup>

**Conclusions and recommendations of the Special Rapporteur on torture and other cruel, degrading or inhumane treatment or punishment**

**A/HRC/10/44**

*E. Conclusions and Recommendations*

71. With regard to human rights and drug policies, the Special Rapporteur wishes to recall that, from a human rights perspective, drug dependence should be treated like any other health-care condition. Consequently, he would like to reiterate that denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law. Equally, subjecting persons to treatment or testing without their consent may constitute a violation of the right to physical integrity. He would also like to stress that, in this regard; States have a positive obligation to ensure the same access to prevention and treatment in places of detention as outside.

72. Similarly, the Special Rapporteur is of the opinion that the de facto denial of access to pain relief, if it causes severe pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment.

73. To address the many tensions between the current punitive approach to drug control and international human rights obligations, including the prohibition of torture and cruel, inhuman and degrading treatment, the Special Rapporteur calls on the Human Rights Council to take up the question of drug policies in the light of international obligations in the area of human rights at one of its future sessions.

74. Regarding the review process, decided by the General Assembly at its special session in 1998, to be held in Vienna in March 2009, the Special Rapporteur recommends that States and the relevant United Nations agencies reassess their policies, bearing in mind the following points:

- (a) States should ensure that their legal frameworks governing drug dependence treatment and rehabilitation services are in full compliance with international human rights norms;
- (b) States have an obligation to ensure that drug dependence treatment as well as HIV/hepatitis C prevention and treatment are accessible in all places of detention and that drug dependence treatment is not restricted on the basis of any kind of discrimination;
- (c) Needle and syringe programmes in detention should be used to reduce the risk of infection with HIV/AIDS; if injecting drug users undergo forcible testing, it should be carried out with full respect of their dignity;
- (d) States should refrain from using capital punishment in relation to drug-related offences and avoid discriminatory treatment of drug offenders, such as solitary confinement;
- (e) Given that lack of access to pain treatment and opioid analgesics for patients in need might amount to cruel, inhuman and degrading treatment, all measures should be taken to ensure full access and to overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care.

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<sup>54</sup> See similarly, Code of Conduct for Law Enforcement Officials adopted by the General Assembly in resolution 34/169.

**Conclusions and recommendations of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights**

**A/HRC/12/26**

65. The Special Rapporteur welcomes the efforts undertaken by the international community to address the growing concerns about the poor working practices and environmental situation prevailing in most ship breaking yards across the world. These efforts have resulted in the adoption of various sets of recommendatory guidelines which seek to ensure the environmentally sound management of ship breaking activities and the reduction of accidents, injuries and occupational diseases too often associated with the dismantling of end-of-life vessels. The recent adoption by IMO of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships is also witness to the serious commitment of the international community to the development of a safer and more environmentally sound management and disposal of end-of-life vessels worldwide.
66. The Special Rapporteur regards the new IMO Convention on ship recycling as a positive step towards the creation of an enforceable regulatory regime aimed at ensuring the protection of workers' health and safety and the preservation of the environment, and encourages States members of IMO to take all appropriate steps to ratify the Convention within a reasonable period of time. In the interim period up to the Convention's entry into force, the Special Rapporteur encourages ship breaking States, flag States and the ship breaking industry to consider applying the technical requirements of the Convention, as well as existing guidelines and standards, on a voluntary basis. He also recommends that the Conference of the Parties to the Basel Convention, the International Maritime Organization and the International Labour Organization continue working together with a view to avoiding duplication of work and overlapping of responsibilities and competencies.
67. The Special Rapporteur is of the view that ship breaking is an issue that requires a global solution. The adoption of the new Convention, although representing a step in the right direction, is not sufficient to bring about the significant and urgently needed improvements to the working practices prevailing in ship breaking yards or the elimination of the serious environmental pollution that ship breaking yards generate. Therefore, the Special Rapporteur calls on all relevant stakeholders, including ship breaking States, flag States, the ship breaking industry and international organizations and mechanisms, to consider adopting and implementing additional measures to address the negative impacts of ship breaking that are not covered by the new Convention. In particular, the Special Rapporteur recommends the adoption of appropriate measures in the following areas:
- (a) Pre-cleaning. Developed countries should consider adopting appropriate measures, including awards for "green" ship dismantling, to prevent, in line with the Basel Convention Ban Amendment, the export of end-of-life vessels containing hazardous materials to developing countries which do not have the capacity to manage them in an environmentally safe manner. Similarly, ship-owners are encouraged, in line with the emerging body of norms on corporate social responsibility and the "polluter pays" principle, to consider pre-cleaning their ships in developed countries, prior to their dispatch to recycling facilities in developing countries;
  - (b) Environmentally sound waste management. Ship-recycling States should endeavour to enforce international obligations and national legislation on environmental protection and develop appropriate infrastructures for ship-recycling activities, including waste management facilities (e.g. landfill sites, incineration plants, etc.). National legislation should, in particular, lay down the conditions under which ships may be accepted into its jurisdiction for recycling. Taking into account that the "beaching" method does not and cannot, by its very nature, offer sufficient guarantees for the environmentally sound management of the hazardous wastes it generates, stakeholders should consider adopting all appropriate measures to ensure the gradual phasing-out of "beaching" and a swift and steady move towards alternative methods of ship breaking;
  - (c) Workers' rights. Ship breaking States should take steps to improve their regulatory and enforcement capacities in the field of labour law and worker safety, health and welfare, so as to strengthen

the protection afforded to persons employed in the ship breaking industry. They should also eliminate obstacles which de facto prevent workers in ship breaking yards from exercising their freedom of association and right to collective bargaining, and set up an effective and reliable system of labour inspections, with the participation of workers' representatives. Ship breaking States should also take immediate steps, to the maximum of their available resources, with a view to realizing fully the right of workers to social security in the event of accidents and occupational diseases. Yard owners should take all appropriate measures, when needed through State support and international assistance and cooperation, to improve health and safety at work (inter alia by providing adequate personal protective equipment and safety training), promote better health care, housing and sanitation facilities for workers, and develop appropriate mandatory insurance schemes to protect workers in the event of accidents and occupational diseases;

(d) Data collection. Ship-recycling States and yard owners should collect disaggregated statistical data on an annual comparative basis on workers who die or become disabled as a result of work-related accidents or occupational diseases, and make these data publicly available;

(e) Ship-recycling fund. States and the shipping industry should consider establishing a ship-recycling fund to support the upgrade of facilities in accordance with the new Convention requirements and promote the development of alternative methods of ship dismantling (with a view to phasing-out "beaching" in the longer term). They should also consider the creation of a fund for victims of accidents and their families, aimed at providing adequate compensation to injured workers or relatives of deceased workers for work-related accidents or occupational diseases resulting in death or permanent disabilities;

(f) International cooperation and assistance. Developed countries, regional integration organizations and international organizations should provide technical assistance to and cooperate with ship-recycling States and other interested parties on projects involving the transfer of technology, or aid funding to provide safety training for workers and support the establishment of basic infrastructure for environmental and human health protection in the recycling facilities.

### **Conclusions and recommendations of the Special Rapporteur on trafficking in persons, especially in women and children**

#### **A/HRC/10/16**

#### Conclusions

- In terms of the challenges associated with tackling human trafficking, the lack of reliable and complete data is a major problem. Therefore, an effective means for combating trafficking in persons will require enhanced information-sharing between States through bilateral and multilateral cooperation and increased data collection capacities, including through the systematic collection of gender- and age-disaggregated data.
- Since trafficking is mostly a cross-border phenomenon, no one State can tackle it alone and cooperation is therefore imperative. Hence, there is a need to increase cooperation and capacity of States to handle readmission and reintegration of trafficking victims in line with human rights.
- Victims are often hidden in the community and the unregulated sectors of the economy, and are engaged in sex work, domestic work, begging, armed conflicts, or farm labour; therefore resources must be committed for law enforcement and redress for victims. Even though trafficking is intertwined with other criminal activities such as smuggling, drugs and arms trafficking, States must avoid treating trafficking only from a crime and border-control perspective or simply as a migration issue. Multilevel approaches are needed that will focus on various perspectives including human rights; crime control and criminal justice; migration; and labour.

- The root causes of trafficking, such as demand for cheap labour, sex tourism, widespread poverty, gender discrimination, conflicts, corruption and restrictive immigration policies of favoured countries for migrants, are insufficiently tackled.
- Trafficking in persons results in cumulative breaches of human rights, and this correlation needs to be recognized in any intervention effort. As far as the mandate of the Special Rapporteur is concerned, the real challenge is not just in adopting strategies that will effectively lead to catching the perpetrators and punishing them. Rather, it is preferable to put in place strategies that will focus equally on the victim by recognizing and redressing the violations suffered, empowering the victim to speak out without being doubly victimized, jeopardized or stigmatized, while at the same time targeting the root causes of human trafficking. The strategies must be people-centred, bearing in mind that human trafficking is about persons whose basic right to live free particularly from fear and want is under constant threat. We must recognize the dignity of the victims and their right to survival and development. Thus, restorative justice is central to combating human trafficking.
- While addressing root causes, innovative approaches need to be sought in tackling the complex problem of human trafficking. The Special Rapporteur believes that international, regional and national strategies for combating trafficking rest on the following “5 P’s” and “3 R’s” - Protection, Prosecution, Punishment, Prevention, Promotion (of international cooperation), Redress, Rehabilitation and Reintegration of victims to assume a constructive role in the society. These pillars will be explored in greater detail in future work and reports.
- We now more than ever need refreshing new ideas and insights into this phenomenon and the Special Rapporteur hopes that together we can examine our “solutions” of the past and begin to propose better ways of tackling trafficking in human beings.

#### Recommendations

- States are urged to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- States should take immediate steps to incorporate the provisions of the Palermo Protocol into their domestic legal system, including by establishing dedicated national anti-trafficking machineries (e.g. an agency) and adopting a plan of action that integrates a human rights framework.
- Regarding data collection and management, States are urged to put in place harmonized data collection mechanisms to improve data collection and reporting on all forms of trafficking to ensure effective programming and monitoring.
- States are urged to work towards a global plan of action to combat trafficking and to improve cooperation through bilateral and multilateral agreements for joint actions against human trafficking among countries of origin, transit and destination.
- States should continuously conduct capacity-building, awareness-raising and sensitization campaigns on trafficking in persons for law enforcement officials, particularly police, judiciary and immigration, and the general public.
- States should observe the principles and guidelines on human rights and human trafficking developed by OHCHR and incorporate them in their legal and policy framework for combating all forms of human trafficking.
- States should ensure that robust, child-centred provisions exist in their legislation to combat trafficking of children and that these are implemented with the highest regard for the rights and well-being of the child. These child-centred policies should include child-friendly reporting



systems, training for law enforcement to ensure that child victims are rescued and reintegrated in child-centred ways and not treated as criminals, and that national action plans and anti-trafficking policies and programmes include children as equal participants and partners.

- Governments and intergovernmental and non-governmental organizations should collaborate and take steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked.
- States should provide all trafficked persons access to specialized support and assistance, regardless of their immigration status. The granting of temporary or permanent residency status and/or access to services should not be dependent on participation in criminal proceedings.
- States should consider the appointment of a national rapporteur who will liaise with the Special Rapporteur to gather, exchange, and process information on trafficking in persons and monitor action.
- States should consider urgent action to address the root causes of trafficking such as growing poverty, youth unemployment and gender inequalities, which increase vulnerability to trafficking, especially of women and girls.

The Special Rapporteur expresses her gratitude to all the Governments<sup>55</sup> that have responded and given constructive feedback on the questionnaire and implores those who are yet to respond to take steps to do so. The intention is to create ownership by all Member States of the collation and dissemination of information, because trafficking in persons is a common problem that needs to be tackled globally and in close cooperation between Member States. Subsequent reports of the Special Rapporteur will provide detailed analysis of the information obtained, discussions and findings thereon. These reports will be published on the website of OHCHR for easy access.

### [Conclusions and recommendations of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises](#)

#### A/HRC/11/13

116. The Special Representative is honoured and humbled by the task the Human Rights Council has set for him of operationalizing the “protect, respect and remedy” framework so as to provide concrete guidance for all relevant actors.

117. In the face of what may be the worst worldwide economic downturn in a century, however, some may be inclined to ask: with so many unprecedented challenges, is this the appropriate time to be addressing business and human rights? This report answers with a resounding “yes”. It does so based on three grounds.

118. First, human rights are most at risk in times of crisis, and economic crises pose a particular risk to economic and social rights. Now more than ever, therefore, the business and human rights agenda matters. Any gains Governments believe can be had by lowering human rights standards for business are illusory, and no sustainable recovery can be built on so flimsy a foundation. Companies must weigh any

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<sup>55</sup> Responses were received from: Albania, Algeria, Argentina, Azerbaijan, Bahamas, Bahrain, Belarus, Belgium, Bulgaria, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Israel, Italy, Jamaica, Japan, Jordan, Latvia, Lebanon, Liechtenstein, Lithuania, Maldives, Mali, Mauritius, Mexico, Moldova, Monaco, Mongolia, Morocco, Myanmar, Nigeria, Panama, Paraguay, Peru, Philippines, Qatar, Republic of Korea, Russian Federation, Singapore, Slovakia, Slovenia, Spain, Swaziland, Syrian Arab Republic, Thailand, Tunisia, Turkey, United Arab Emirates, United States of America, Ukraine, Uruguay, Viet Nam and Zambia.

corresponding temptations against the impact of declining public confidence in business, growing populism and an impending epochal shift in regulatory environments.

119. Second, it was noted earlier that the same types of governance gaps and failures that produced the current economic crisis also constitute what the Special Representative has called the permissive environment for corporate wrongdoing in relation to human rights. The necessary solutions for both similarly point in the same direction: Governments adopting policies that induce greater corporate responsibility, and companies adopting strategies reflecting the now inescapable fact that their own long-term prospects are tightly coupled with the well-being of society as a whole. Strengthening the international human rights regime against corporate-related abuse thereby contributes to, and gains from, the universally desired transition toward a more inclusive and sustainable world economy. Values are becoming a value proposition.

120. Third, the “protect, respect and remedy” framework identifies specific ways to achieve these objectives. For Governments, the key is to drive the business and human rights agenda more deeply into policy domains that directly shape business practices. For companies, the key is to become more fully aware of and responsive to their infringements on the rights of others. Access to effective remedy, judicial and non-judicial, is an essential component enabling individuals and communities to vindicate their rights - the very purpose of the human rights regime. More prosaically, it also serves as a signalling device, a feedback loop, alerting Governments, business and society as a whole when all is not well, while providing opportunities for early intervention and resolution before greater harm occurs.

121. In short, business and human rights is not an ephemeral issue to be considered at some future date. It is and must remain at the core of our common concerns today.

**[Summary of the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises regarding State obligations to provide access to remedy for human rights abuses by third parties, including business: an overview of international and regional provisions, commentary and decisions](#)**

**A/HRC/11/13/Add.1**

**Summary**

The conceptual and policy framework proposed in 2008 by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and unanimously endorsed by the Human Rights Council, rests on three pillars: the State duty to protect against human rights abuses by third parties, including business through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights meaning essentially not to infringe on the rights of others; and greater access by victims to effective remedy, judicial and non-judicial.

The State duty to protect is grounded in international human rights law, which provides that States are obliged to take appropriate steps both to prevent corporate-related abuse of the rights of individuals within their territory and/or jurisdiction and to investigate, punish and redress such abuse when it does occur - in other words, to provide access to remedy. Several of the core international and regional human rights treaties explicitly provide for these elements of remedy; and where they do not, there has been some useful commentary from the relevant human rights commissions, courts and United Nations treaty bodies.

Building on research previously conducted by the Special Representative, this report examines the scope of State obligations to provide access to remedy for third party abuse, including by business, under the following international human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities. It also discusses the scope of States’ obligations under the main

regional human rights treaties: the American Convention on Human Rights, the European Convention on Human Rights and the African Charter on Human and Peoples' Rights.

The remedial principles governing international human rights law have been strongly influenced by the law of State responsibility and, as a general rule, follow its emphasis on compensatory justice - that is, putting the victim back in (or as close to) the position they would have been in but for the violation.

With respect to the United Nations treaty bodies, some common strands can be identified in their approach to State obligations to provide access to remedy for human rights abuses, whether committed by public or private actors. They have emphasized the importance of:

- Conducting prompt, thorough and fair investigations
- Providing access to prompt, effective and independent remedial mechanisms, established through judicial, administrative, legislative and other appropriate means
- Imposing appropriate sanctions, including criminalizing conduct and pursuing prosecutions where abuses amount to international crimes; and
- Providing a range of forms of appropriate reparation, such as compensation, restitution, rehabilitation, and changes in relevant laws

Several have also stressed the need for special attention to be paid to "at-risk" or vulnerable groups - potentially including women, children, indigenous peoples and other minorities - to ensure that they have access to effective remedies that are appropriately tailored to their needs. This is complemented in the case of indigenous peoples by other international instruments dealing specifically with their rights.

Although some of the newer international human rights treaties expressly contemplate States taking steps to eliminate abuse by business enterprises, and even establishing liability for legal persons, there remains a lack of clarity as to the steps they should take to hold companies accountable. Particular areas that would benefit from greater clarity include whether States should impose liability on companies themselves, in addition to natural persons acting on the entity's behalf; when States are expected to provide individuals with civil causes of action against companies (i.e. separate from criminal sanctions and going beyond administrative complaints mechanisms); and whether and to what extent States should hold companies liable for alleged abuses occurring overseas.

While the extraterritorial dimension of the State duty to protect under international human rights law remains unsettled, current guidance suggests that States are not required to regulate or adjudicate the extraterritorial activities of businesses incorporated in their jurisdiction, but nor are they generally prohibited from doing so, as long as there is a recognized jurisdictional basis and an overall reasonableness test is met. Within those parameters, the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Racial Discrimination (CERD) have encouraged States to take steps to prevent abuse abroad by corporations within their jurisdiction and to hold them accountable.

The regional human rights commissions and courts have elaborated upon key aspects of the State obligation to provide access to remedy for human rights abuses, including the meaning of a "fair hearing" and when practical matters, like inadequate legal aid or representation, may constitute unacceptable barriers to remedy. With respect to corporate-related abuse, a study on the Inter-American system conducted for the Special Representative shows consideration of the impact of business operations in situations involving violations of indigenous peoples' rights, threats to an individual's physical integrity (including from environmental harm), and in contexts implicating economic and social rights and the rights of the child. Further research is being conducted into the treatment of corporate-related abuse by the European and African systems.

While the State duty to protect, including the obligation to provide access to remedy, extends to all recognized rights that private parties are capable of impairing and to all business enterprises, some types of companies, rights, and victims have been referred to more frequently. For example, the United Nations treaty bodies have emphasized that States should:

- Protect employees' rights in both public and private settings and establish effective complaints mechanisms for employment-related grievances
- Minimize the potential for extractive companies to impair the ability of communities affected by their activities, especially indigenous peoples, to access remedial mechanisms
- In situations where "State functions" have been privatized, ensure that effective systems are in place to remedy any abuse by the relevant private companies involved

This State obligation to provide access to remedy is distinct from the individual right to remedy recognized in a number of the international and regional treaties. While the State obligation applies to

abuse of all applicable rights by third parties, including business, it is unclear how far the individual right to remedy extends to abuses by non-State actors. However, an individual right to remedy has been affirmed for the category of acts covered by the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, “irrespective of who may ultimately be the bearer of responsibility for the violation”.

The United Nations Basic Principles were intended as a restatement of existing State obligations. They indicate the international community’s enhanced concern with access to remedy in cases involving gross violations, and may reflect increased expectations that individuals should be able to resort to national courts to vindicate their treaty rights in such situations. The Principles also identify three core aspects of the individual right to remedy in relation to gross violations: the right to equal and effective access to justice; to adequate, effective and prompt reparation for harm suffered; and to access to relevant information concerning violations and reparation mechanisms. They suggest that States may be required to do more, and be afforded less discretion, where there is such an individual right. Their adoption invites a renewed focus on existing State obligations to provide access to remedy for gross violations committed by private actors, and on the legal and practical implications of the individual right to remedy in cases involving corporations.

The Special Representative will continue to follow developments in these areas and to consult with relevant stakeholders in exploring the implications for operationalizing the three complementary pillars of the “protect, respect and remedy” framework.

### Conclusions and recommendations of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation

#### A/HRC/12/24

81. International human rights law entails clear human rights obligations related to access to sanitation. The inextricable links between sanitation and so many human rights mean that international human rights law requires States to ensure access to sanitation that is safe, hygienic, secure, affordable, socially and culturally acceptable, provides privacy and ensures dignity in a non-discriminatory manner. However, only looking at sanitation through the lens of other human rights does not do justice to its special nature, and its importance for living a dignified life. In this regard, although the discussion about recognition of a distinct right to sanitation is ongoing, the independent expert supports the current trend of recognizing sanitation as a distinct right. In line with these conclusions, the independent expert offers the following recommendations:

- (a) Legal recognition and respect:
  - States are encouraged to support legal and political developments at all levels towards broader recognition of sanitation as a distinct human right
  - States must abide by their human rights obligations related to sanitation at all times, including in emergency situations, in disaster response and during conflict
- (b) Information gathering:
  - States should collect current, accurate and detailed information about sanitation coverage in the country and the characteristics of un-served and underserved households. Disaggregated data is necessary to determine which groups are particularly disadvantaged. This information should be made public and inform the design of policies for the sector and the allocation of budgets.

- (c) Plans, policies and responsibilities:
- States must adopt a national action plan on sanitation, endorsed at the highest levels, which duly reflects the State's human rights obligations related to sanitation, ensuring participation of all concerned individuals, communities and groups. States should promote the participation of national human rights institutions and sanitation experts in these endeavours
  - States should assign clear institutional responsibilities for sanitation at all levels and avoid fragmentation. Where responsibilities are assigned to different ministries, departments or institutions, all efforts should be made to ensure adequate coordination
  - States should adopt appropriate policies to expand access to un-served and underserved areas, taking an integrated approach that addresses the underlying structural reasons for discrimination in access to sanitation
  - States should include sanitation in their national poverty-reduction strategies and development plans
- (d) National budgets:
- The vital importance of sanitation should be reflected in national and subnational budgets, as well as in budgets for international assistance and cooperation
- (e) International assistance and cooperation:
- Development agencies should prioritize interventions in the sanitation sector and put the human rights obligations related to sanitation at the core of their projects. They should apply a human rights-based approach to sanitation, meaning that every intervention in the sanitation sector should comply with the human rights principles of non-discrimination, participation, and accountability, and should be aimed at the fulfilment of the relevant human rights obligations related to sanitation. They should also empower local authorities and communities to comply with human rights obligations related to sanitation.
- (f) International organizations:
- United Nations agencies, funds and programmes as well as international financial institutions should prioritize interventions on sanitation and put the human rights obligations related to sanitation at the centre of their projects
  - At the national level, United Nations country teams should support governments in the preparation of national sanitation action plans, the revision of legislation, and other activities aimed at the fulfilment of their human rights obligations related to sanitation
- (g) Private sector:
- The private sector, including members of the CEO Water Mandate of the United Nations Global Compact, should respect and support the realization of human rights related to sanitation
- (h) Non-discrimination and gender equality:
- Legislation, policies, plans and programmes should aim to eliminate inequalities based on wealth, sex and location as well as other grounds. Measures to enhance access to sanitation must give particular attention to disadvantaged groups and individuals, such as the poor, as well as those living in remote areas and urban informal settlements, irrespective of their tenure status. Targeted measures should be taken to ensure affordability of sanitation services.

- States and non-State actors should adopt a gender-sensitive approach to all relevant policymaking given the special sanitation needs of women and the key role they often play in managing sanitation and hygiene in communities.
  - States are encouraged to recognize the crucial role of sanitation workers and to take measures to raise the profile of their work and ensure their occupational health, safety and dignity.
- (i) Awareness-raising and community mobilization:
- Large-scale public awareness campaigns should be organized both at the national as well as at the international level, aimed at promoting behavioural change regarding sanitation and to provide information, in particular on hygiene promotion. The independent expert believes that it is high time for vigorous and sustained efforts to tackle the persisting taboos around sanitation and personal hygiene
  - States and other relevant actors should provide funding to support community mobilization and organization for actions towards the realization of the human rights obligations related to sanitation
- (j) Monitoring and accountability:
- States and other relevant actors should monitor changes over time to gauge the effectiveness of interventions and the impact of policy reforms and investments at the national and sub-national levels
  - States should establish effective, transparent and accessible monitoring and accountability mechanisms, with power to monitor and hold accountable all relevant public and private actors
  - States should include information on the fulfilment of their human rights obligations related to sanitation in their national reports to relevant treaty monitoring bodies
  - Relevant treaty monitoring bodies and special procedures should address the human rights obligations related to sanitation where relevant in their activities

### [Conclusions and recommendations of the Special Rapporteur on violence against women, its causes and consequences](#)

#### A/HRC/11/6

81. Violence against women is a violation of the right to life and to personal security but also of a whole range of basic economic and social rights. Yet the differential treatment and implementation of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights remains a major barrier greatly limiting Government and non-State actor efforts to achieve the full and equal realization of women's human rights in order to prevent VAW from occurring in the first place.

82. Against this backdrop the present report has examined the interconnections between the current global political economic order and women's enjoyment of their human rights, in particular the implications for VAW; arguing that economic and social rights are essential in enhancing women's capabilities and creating enabling conditions, such that women do not bear the brunt of globalization and economic crisis disproportionately, and can effectively avoid/resist the risk of violence.

83. While competitive globalization has created new opportunities for some groups of women, it has disadvantaged others, who have entered the workforce under insecure and unregulated conditions, thus creating new risks and vulnerabilities to abuse and exploitation. At the same time, globalization has undermined State capacity for enforcement and the provision of public goods and services. This has resulted in a return to community-based enforcement and survival systems, which have not only intensified women's workload in order to compensate for the erosion of crucial public services and entitlements but also subordinated women to increasingly conservative cultural discourses that challenge the universality of rights and equality of women.

84. The feminization of migration, along with feminization of the labour force, two important outcomes of globalization, hold new risks and vulnerabilities as well as opportunities for women's empowerment. But neoliberal policies that fail to attend to the basic social and economic entitlements of individuals and families make violence a more likely outcome for women than their empowerment. Restrictive immigration policies focused on national security and a narrow construal of economic interests often limit the options of migrant women workers for safe and independent survival in an alien environment. The challenge lies in creating the guarantees for women to migrate safely and with dignity.<sup>56</sup>

85. The current financial crisis, which clearly reflects the inherent instabilities of unregulated markets, offers a crucial opportunity for Governments and international institutions to invest in public services and infrastructure to create jobs, improve productivity and revive economic demand. Such investment, if well designed, has the potential to expand women's economic opportunities and enhance livelihood security. The State, no doubt, is not the only authority to be held accountable for violations of women's human rights. Sovereignty in the new global order must be understood as the responsibility of nation States, as well as the shared responsibility of the international community at large. Therefore, promotion and protection of women's economic and social entitlements to prevent and protect them from violence must be pursued transnationally. The future of human rights and distributive justice will require democratizing cultural, political and economic hegemony.

86. In view of the above discussion, a viable strategy to address the underlying socio-economic causes of VAW must include, but not be limited, to the following broad guidelines, which apply to Governments as well as local and international non-State actors.

87. Creation of a gender-sensitive knowledge base as follows:

- (a) Develop indicators and generate sex-disaggregated data on risk and preventive factors on VAW that include economic and political factors;
- (b) Generate sex-disaggregated data on VAW, its causes and consequences in conflict, post-conflict and other reconstruction processes;
- (c) Document shortfalls in economic and social rights of women parallel to violations in political and civil rights;
- (d) Include indicators and targets for eliminating VAW with measures of women's economic and political participation in MDG 3 on empowering women, and the UNDP Gender and Development and Gender Empowerment Indexes.

88. Establishing gender-competent policy and programming as follows:

- (a) Design public works programmes in the social and service sectors to promote women's employment and support their role as economic agents by contributing to greater social provisioning needs in the household and community;
- (b) Provide non-discriminative economic opportunities and reconstruction programmes that address the economic and social dimensions of women's empowerment in post-conflict and crisis societies;
- (c) Codify economic and social rights in enforceable national law, including guarantees for minimum level of income, food, health care, etc.;
- (d) Evaluate all policies of Governments and international financial institutions from a gender-perspective guided by the International Covenant on Economic, Social and Cultural Rights and the

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<sup>56</sup> *Varia, loc. cit.* (note 82 above).

Convention on the Elimination of All Forms of Discrimination against Women, with the view to preventing negative consequences for women of economic liberalization, financial and structural adjustment policies and programmes, and trade agreements - at a minimum, these policies should “do no harm”;

(d) Factor in VAW, its causes and consequences in financing for development initiatives, including the Gender Equality Fund and other partnerships devoted to new institutional mechanisms, research, data and action plans;

(f) Adopt gender-responsive budgeting strategies at local, national and international levels.

89. Monitoring progress as follows:

(a) Ensure that economic stimulus and reconstruction/recovery packages do not privilege physical over social infrastructure investment and/or support for men’s over women’s jobs, and full-time over part-time economic opportunities in different economic sectors;

(b) Establish intermediary institutions to manage and monitor the rights of foreign domestic workers;

(c) Use cross-national data on trends or patterns that reveal linkages between VAW and women’s socio-economic status (i.e. control over income and productive resources) and monitor over time throughout an individual or family’s life cycle.

90. In the field of transnational cooperation:

(a) Invest in public services and infrastructure to create jobs, improve productivity and revive economic demand;

(b) Develop mechanisms to hold non-State actors, including corporations and international organizations accountable for human rights violations and for instituting gender-sensitive approaches to their activities and policies;

(c) Channel international assistance for the realization of economic and social rights;

(d) Establish transnational mechanisms to promote and protect the full range of women’s rights and eliminate VAW.



**ANNEX II****Special Procedures' 2009 country visits**

In 2009, Special Procedures undertook 74 fact finding country visits to 51 countries (including follow up visits).

<b>COUNTRY VISITED</b>	<b>MANDATE</b>	<b>DATES OF THE VISIT</b>
Afghanistan	Working Group on the use of <b>mercenaries</b> as a means of impeding the exercise of the right of peoples to self-determination	4-11 April 2009
Australia	Special Rapporteur on the situation of human rights and fundamental freedoms of <b>indigenous</b> people	17-28 August 2009
	Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental <b>health</b>	23 November- 4 December 2009
Bangladesh	Independent Expert on the issue of human rights obligations related to access to safe drinking <b>water and sanitation</b> / Independent Expert on the question of human rights and <b>extreme poverty</b>	3-10 December 2009
Belarus	Special Rapporteur on <b>trafficking in persons</b> , especially in women and children	18-24 May 2009
Benin	Special Rapporteur on the right to <b>food</b>	11-20 March 2009
Bosnia and Herzegovina (follow-up)	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	11-13 November 2009
Botswana	Special Rapporteur on the situation of human rights and fundamental freedoms of <b>indigenous</b> people	19-27 March 2009
Brazil	Special Rapporteur on the right to <b>food</b>	12-16 October 2009
Burundi	Independent Expert on the situation of human rights in <b>Burundi</b>	20-30 January 2009
Burundi/Somalia/Horn of Africa	Independent Expert on the situation of human rights in <b>Somalia</b>	1-12 June 2009
Canada	Independent Expert on <b>minority issues</b>	13-23 October 2009
Central African Republic	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	10-12 February 2009
Chad	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	3-9 February 2009
Chile	Special Rapporteur on the situation of human rights and fundamental freedoms of <b>indigenous</b> people	5-9 April 2009

Colombia	Special Rapporteur on <b>extrajudicial, summary or arbitrary executions</b>	8-18 June 2009
	Special Rapporteur on the situation of human rights and fundamental freedoms of <b>indigenous</b> people	20-27 July 2009
	Special Rapporteur on the situation of <b>human rights defenders</b>	7-18 September 2009
	Special Rapporteur on the <b>independence of judges and lawyers</b>	7-16 December 2009
Costa Rica	Independent Expert on the issue of human rights obligations related to access to safe drinking <b>water and sanitation</b>	18-27 March 2009
Democratic Republic of the Congo	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	21 January-3 February 2009
	Special Rapporteur on <b>extrajudicial, summary or arbitrary executions</b>	5-15 October 2009
	Special Rapporteur on the situation of <b>human rights defenders</b>	21 May- 3 June
Ecuador	Working Group of experts on people of <b>African descent</b>	22-26 June 2009
	Independent expert on the effects of <b>foreign debt</b> and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights	28 April-8 May 2009
Egypt	Special Rapporteur on the promotion and protection of human rights while <b>countering terrorism</b>	17-21 April 2009
	Independent Expert on the issue of human rights obligations related to access to safe drinking <b>water and sanitation</b>	21-28 June 2009
Georgia (follow-up)	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	5-6 November 2009
Germany	Special Rapporteur on contemporary forms of <b>racism</b> , racial discrimination, xenophobia and related intolerance	22 June-1 July 2009
Guatemala	Special Rapporteur on the <b>independence of judges and lawyers</b>	26-30 January 2009
	Special Rapporteur on the right to <b>food</b>	3-5 September 2009
Haiti	Independent Expert on the situation of human rights in <b>Haiti</b>	27 April-9 May 2009
	Special Rapporteur on contemporary forms of <b>slavery</b> , including its causes and consequences	2-10 June 2009
	Independent Expert on the situation of human rights in <b>Haiti</b>	29 August-7 September 2009
	Independent Expert on the situation of human rights in <b>Haiti</b>	25 November-1 December 2009

Japan	Special Rapporteur on <b>trafficking in persons</b> , especially in women and children	12-17 July 2009
Japan (relating to DPRK)	Special Rapporteur on the situation of human rights in the <b>Democratic People's Republic of Korea</b>	23-28 January 2009
Kazakhstan	Special Rapporteur on <b>torture</b> and other cruel, inhuman or degrading treatment or punishment	5-13 May 2009
	Independent Expert on <b>minority issues</b>	6-15 July 2009
Kenya	Special Rapporteur on <b>extrajudicial, summary or arbitrary executions</b>	16-25 February 2009
Kyrgyzstan	Special Rapporteur on the adverse effects of the movement and dumping of <b>toxic and dangerous products and wastes</b> on the enjoyment of human rights	29 September-9 October 2009
	Special Rapporteur on violence against <b>women</b> , its causes and consequences	7-17 November 2009
Lao People's Democratic Republic	Special Rapporteur on <b>freedom of religion or belief</b>	23-30 November 2009
Maldives	Special Rapporteur on <b>adequate housing</b> as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	18-26 February 2009
	Special Rapporteur on the promotion and protection of the right to <b>freedom of opinion and expression</b>	1-5 March 2009
Malta	Working Group on <b>arbitrary detention</b>	19-23 January 2009
Mauritania	Special Rapporteur on contemporary forms of <b>slavery</b> , including its causes and consequences	24 October-4 November 2009
Mongolia	Special Rapporteur on the right to <b>education</b>	1-8 October 2009
Morocco	Working Group on <b>enforced or involuntary disappearances</b>	22-25 June 2009
Myanmar	Special Rapporteur on the situation of human rights in <b>Myanmar</b>	14-19 February 2009
Nicaragua	Special Rapporteur on the right to <b>food</b>	6-13 September 2009
Norway	Independent expert on the effects of <b>foreign debt</b> and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights	28 April-8 May 2009
Paraguay	Special Rapporteur on the right to <b>education</b>	14-22 April 2009
Poland	Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical	5-11 May 2009

	and mental <b>health</b>	
Poland	Special Rapporteur on <b>trafficking in persons</b> , especially in women and children	24-29 May 2009
Romania	Special Rapporteur on the human rights of <b>migrants</b>	15-20 June 2009
Russian Federation	Special Rapporteur on the rights of <b>indigenous people</b>	5-16 October 2009
Senegal	Working Group on <b>arbitrary detention</b>	5-15 September 2009
	Special Rapporteur on the human rights of <b>migrants</b>	14-21 August 2009
	Special Rapporteur on the sale of <b>children</b> , child prostitution and child pornography	21-29 October 2009
Serbia/Kosovo	Special Rapporteur on <b>freedom of religion or belief</b>	30 April-8 May 2009
	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	28 June-4 July 2009
Somalia	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	14-21 October 2009
Sri Lanka	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	2-6 April 2009
Sudan	Independent Expert on the situation of human rights in the <b>Sudan</b>	25 May-4 June 2009
The former Yugoslav Republic of Macedonia	Special Rapporteur on <b>freedom of religion or belief</b>	26-29 April 2009
Uganda	Representative of the Secretary-General on the human rights of <b>internally displaced persons</b>	12-17 July 2009
United Arab Emirates	Special Rapporteur on contemporary forms of <b>racism</b> , racial discrimination, xenophobia and related intolerance	4-8 October 2009
United Arab Emirates	Special Rapporteur on the sale of <b>children</b> , child prostitution and child pornography	12-18 October 2009
United Kingdom	Special Rapporteur on the human rights of <b>migrants</b>	22-26 June 2009
United States of America	Special Rapporteur on <b>adequate housing</b> as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	26 October-6 November 2009
	Working Group on the use of <b>mercenaries</b> as a means of impeding the exercise of the right of peoples to self-determination	20 July-3 August 2009
Uruguay	Special Rapporteur on <b>torture</b> and other cruel, inhuman or degrading treatment or punishment	23-27 March 2009

Zambia	Independent Expert on the question of human rights and <b>extreme poverty</b>	20-28 August 2009
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