

**COMPILATION OF SPECIAL PROCEDURES' RECOMMENDATIONS**  
**BY COUNTRY**  
**2008**  
**REV.1**

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 “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 seventh session\* (3-28 March 2008), eighth session (2-18 June 2008), and ninth session (8-26 September 2008). 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 2008.
4. Annex II contains a list of all Special Procedures’ country visits which took place in 2008. It should be noted that some reports of missions which took place in 2008 have only been presented to the Human Rights Council in 2009, therefore, the conclusions and recommendations of such reports will be contained in the 2009 issue of this compilation, to be published in 2010.
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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\* Previous annual compilations are available on the OHCHR website (under Information tools):  
<http://www2.ohchr.org/english/bodies/chr/special/index.htm>

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## COUNTRY MISSION REPORTS

### Algeria

#### Introduction

During the period under review, the Special Rapporteur on violence against women visited Algeria from 21 January to 1 February 2007 (please refer to document A/HRC/7/6/Add.2).

#### Conclusions and recommendations (A/HRC/7/6/Add.2, paras. 72-99)

94. Women's status in Algeria is characterized by contradictions. On the one hand, in the context of Algeria's modernization project, many women have made remarkable advances in education and in certain professional fields. On the other hand, exclusion and poverty with a distinctly female face remain strikingly visible.

95. Women lack equal access to the labour market and decision-making positions. Moreover, many women are still subjected to oppression and discrimination in the family circle. The Family Code has been considerably improved, but retains provisions that disadvantage women, most significantly with regard to inheritance and the material consequences of divorce. Women who are socially stigmatized, including divorced and deserted women, single mothers and street women, are particularly vulnerable and urgently need more State support.

96. Violence against women in the private sphere by various family members is pervasive but insufficiently recognized and acknowledged in society at large. The ejection of women and girls into the street is a particularly egregious form of such violence. Sexual harassment and abuse at work and in places of education is another area of major concern.

97. Women face immense social pressures preventing them from reporting such crimes, while the State fails to encourage, protect and support those women that do want to report them. This failure manifests itself in gaps in the penal and labour law framework; an inequitable marital property regime; the lack of specialized women's shelters; and gender-biased police, as well as lax sentencing practices.

98. Contrary to the terms of the Charter on Peace and National Reconciliation, the perpetrators of sexual violence committed during the black decade effectively enjoy impunity, while their victims continue to experience considerable social problems. Families of the disappeared, consisting mainly of women, are still denied their right to truth and face difficulties in accessing the compensation promised under the Charter.

99. In the light of my findings and conclusions, I wish to make a number of recommendations to the Government and other relevant actors.

100. In terms of legislative reform, the Government should:

- (a) Reform the Family Code to ensure that it fully respects the principle of non-discrimination on the basis of sex. As a minimum, this reform should:
  - (i) Abolish all provisions that deny women equal access to inheritance;
  - (ii) Outlaw polygamy;
  - (iii) Abolish the legal requirement of the institution of the marital guardian (*wali*);
  - (iv) Make the necessary legal changes to recognize the marriages of Muslim women to non-Muslims;

(v) Reform the marital property regime to allow all assets attained during marriage to be shared equally between partners in the case of divorce. The distinction of property as “male” or “female” as a basis for the distribution of household goods after divorce should be abolished;

(b) Reform the Penal Code to ensure non-discrimination and enhance the protection of women against violence. As a minimum, the legislation should:

- (i) Explicitly criminalize marital rape;
- (ii) Classify physical assault committed by a spouse, former spouse, cohabitant partner or former cohabitant partner as aggravated assault and impose penalties comparable to assault against parents or children;
- (iii) Abolish article 279 of the Penal Code and any other provisions that can be used to avoid or mitigate punishment for crimes committed by family members;
- (iv) Reform article 269 to outlaw any corporal punishment of children;
- (v) Criminalize all forms of sexual harassment regardless of the relationship between perpetrator and victim;
- (vi) Redefine sexual crimes as crimes against physical integrity;
- (vii) Explicitly decriminalize abortion in cases of pregnancy due to rape;

(c) Introduce judicial protection orders to enable the authorities to physically remove and ban perpetrators of domestic violence from their domicile for a specified period of time;

(d) Reform the Labour Code and give victims of mobbing, sexual harassment and sexual abuse at work or in the recruitment process effective remedies against their employers, including the right to compensation for material loss and emotional suffering where employers engage in or fail to adequately protect employees against such conduct. Adequate measures to protect victims and witnesses of such conduct from intimidation and reprisals should also be introduced by law.

101. The Government should undertake the following international commitments:

- (a) Remove impermissible reservations to articles 2 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the redundant reservation to article 9;
- (b) Consider ratifying the Optional Protocol to CEDAW, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and the International Convention for the Protection of all Persons from Enforced Disappearance;
- (c) Consider issuing a standing invitation to all mandate-holders of the Human Rights Council and monitoring mechanisms of the African Union;
- (d) Invite the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Working Group on Enforced or Involuntary Disappearances to carry out official visits to Algeria. Schedule the agreed visit of the Special Rapporteur on the right to freedom of opinion and expression.

102. To improve the institutional framework, the Government should:

- (a) Adopt the National Strategy to Combat Violence against Women and fully implement it in close cooperation with other stakeholders such as women’s associations and the United Nations;
- (b) Upgrade the office of the Delegate Minister for the Family and the Status of Women to a fully-fledged Ministry with the mandate to coordinate and monitor all Government action on gender equality and to initiate proposals to reform policies and laws, and provide adequate budget resources to the Ministry to carry out these functions;
- (c) Create a programme within the Consultative Commission on the Protection and

Promotion of Human Rights to address discrimination and violence against women, as well as harassment of women's rights defenders, and include these concerns in the annual reports to the President;

(d) Publish and widely disseminate all reports issued by the Consultative Commission;

(e) Require the Minister Delegate for the Family and the Status of Women, the Minister of National Solidarity, the Director-General of National Security and other relevant authorities to hold periodic round-table meetings open to all women's rights organizations and other human rights groups to discuss any human rights challenges concerning women.

103. In order to provide protection and support for women facing violence, the Government and other relevant actors should:

(a) Carry out a needs assessment in cooperation with the United Nations and non-governmental women's rights associations and set up and run shelters for women facing violence, or provide non-governmental associations with the necessary funds to do so;

(b) Set up and support women's help centres and telephone hotlines for women and girls facing violence, harassment or family problems;

(c) Provide social reintegration training in women's shelters that gives women a real choice as to whether to seek reconciliation, remarry or establish a life of their own;

(d) Ensure that street women, divorced, separated, deserted or widowed women, single mothers and their children, benefit from special protective measures against all forms of discrimination, harassment and violence, including through financial assistance;

(e) Take all necessary measures to ensure that all families of the disappeared and all victims of sexual violence committed during the black decade receive prompt and adequate compensation. Presidential Decree No. 06-93 of 28 February 2006 should be amended so that a declaration of death for the disappeared is no longer a prerequisite for compensation;

(f) Respect the rights of women who suffered violence during or in relation to the black decade, as well as human rights defenders, journalists and others who support them, to publicly present views on national reconciliation, peace, truth and justice that diverge from official policy. They should be allowed to organize without bureaucratic impediments or legal obstacles and public officials at all levels of Government should receive written instructions to this effect. Officials who threaten or harass persons with such divergent views should be subject to disciplinary measures and, where appropriate, prosecution. Article 46 of Presidential Order No. 06-01 of 27 February 2006 (criminalizing the abusive use of "the wounds of the national tragedy") should be revised and its overly broad ambit curtailed.

104. Investigation and prosecution. In this regard, the Government should:

(a) Adopt a zero tolerance policy towards all forms of violence against women and girls and diligently record, investigate and prosecute all cases. Police and other officials who fail to register or process criminal complaints should be subject to disciplinary/prosecutorial measures;

(b) Appoint an independent commission to investigate sexual violence committed during the black decade. The final report of the commission should be published and widely disseminated. On the basis of the findings of this commission and all other information available to the Government, all identified perpetrators of sexual violence should be exempted from amnesty and brought to justice;

(c) Publish the final report of the Ad hoc Inquiry Commission in Charge of the Question of Disappearances. It should also systematically gather all available information on the fate and whereabouts of disappeared persons and provide the information to the families of the disappeared.

105. In regard to awareness raising the Government and other relevant actors should:

(a) Include specific modules on CEDAW, the United Nations Declaration on the Elimination of Violence against Women, and the interpretation of relevant domestic legislation, including the Family

- Code and the Penal Code, in the light of these international instruments, in the programmes of the Judicial Academy, the police academies and other public service training institutions;
- (b) Promote, through media, school curricula and public campaigns, gender roles and relations that are compatible with human rights and equality norms, including masculine images that are de-linked from domination and violent expressions of power;
  - (c) Promote gender-sensitive media reporting to avoid stereotypes and discriminatory attitudes towards all women and to ensure respect for victims and their families when covering incidents of violence against women;
  - (d) Support researchers and statisticians in order to improve research and data collection on gender issues and violence against women and disaggregate all official statistics on the basis of sex.

106. With regard to women's empowerment, the Government and other relevant actors should:

- (a) Ensure that all girls and boys complete mandatory education and fund special programmes in areas with particularly low schooling rates. Establish, with the support of the United Nations, an indicator system to monitor educational quality and outcomes in all schools, with gender equality as a key indicator;
- (b) Take measures to better meet women's housing and employment needs, particularly for victims of violence, single and other marginalized women;
- (c) Create special programmes to protect women from harassment and abuse in the workplace, including the creation of free telephone hotlines. Employers should take measures to address obstacles hindering the participation of young and married women in the labour market. The rate of women beneficiaries in the microenterprise support programme should be increased to at least 30 per cent;
- (d) Introduce a 30 per cent quota system for women in political parties, labour unions, national and local elected bodies and for senior positions in the public and private sector.



## Angola

### Introduction

During the period under review, the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion visited Angola.

The Working Group on Arbitrary Detention visited Angola from 17-27 September 2007 (please refer to document A/HRC/7/4/Add.4).

### Conclusions and recommendations (A/HRC/7/4/Add.4, para. 104)

104. On the basis of its findings the Working Group would like to make the following conclusions and recommendations to the Government:

(a) The Working Group would like to receive from the Government information on the measures taken following the inspection visit of Viana Immigration Detention Centre conducted on 27 November 2007 by the Special Rapporteur on freedom of religion or belief. It would also like to receive a comprehensive report by the Government on the outcome of the investigation of the Commission of Inquiry and on the implementation of the Commission's recommendations.

(b) The Working Group recommends that the Angolan Government take immediate measures to prevent instances of arbitrary detention from occurring, which would as a side effect also redress the current situation of overcrowded prisons, by considering:

(i) To take into account more frequently the eligibility of prisoners for early release on parole;

(ii) To make provision in order to guarantee that the time limits for pre-trial detention are observed;

(iii) To make use of detention on remand less frequently, for example for persons involved in traffic accidents; and

(iv) To change the laws, which require convicts having received a suspended sentence or accomplished their prison term, or persons acquitted by the court of first instance in the event of an appeal lodged by the prosecution, to remain in pre-trial detention pending the outcome of the appeal to the sentence of the court of first instance.

(c) The Working Group encourages the Government to increase the frequency of inspection and control visits of State organs to prisons and other detention facilities. The Government is further invited to consider the possibility of empowering judges to conduct regular prison and detention facilities visits. It urges the Government to extend the permission of such visits to non-governmental organizations which are active in the field of promotion and protection of human rights, if they so wish and for which there have already been examples in the past.

(d) The Working Group invites the Government to pay particular attention to the situation of children in conflict with the law and encourages it to make, as part of its reform of the Criminal Procedure Code, provision for the introduction of a special justice system for minors and bring its legislation and practice as regards the arrest and detention of minors fully into conformity with articles 37, 39 and 40 of the Convention on the Rights of the Child, to which Angola is a party, and other appropriate international standards:

(i) The practice of holding minors in custody and in prisons together with adults should be urgently dealt with and avoided;

(ii) The regime in detention applied to minors should be adapted to suit their character and age wherever possible;

(iii) Immediate action is required to ensure that minors below the age of 16 are not being detained. In case of doubt, the onus of proof regarding their age should be shifted to the State.

- (e) The Working Group further recommends to the Government that it reconsider the legal framework relating to pre-trial detention in order to ensure that the right to challenge the legality of detention is effectively protected by a petition of habeas corpus.
- (f) The Working Group requests that the Government establish guidelines and criteria to prevent non-judicial public authorities, who lack the necessary independence and impartiality, from sitting as assessors on the bench of criminal courts or performing the tasks of public defenders.
- (g) The Working Group recommends separating the different agencies which have an interest in a criminal investigation from those in charge of supervision of prisons. The Working Group recommends that the prison administration be placed under the authority of the Ministry of Justice, as was the case prior to 1988.
- (h) The Working Group would like the Government to consider establishing a mechanism ensuring that military court decisions are subject to the control of the civil Supreme Court with respect to the proper exercise of military jurisdiction and other possible conflicts of competence.
- (i) The Working Group invites the Government of Angola to consider ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, as they provide for effective tools to prevent torture and other forms of ill-treatment.

The Special Rapporteur on freedom of religion visited Angola from 20-27 November 2007 (please refer to document A/HRC/7/10/Add.4).

**Conclusion and recommendations** (A/HRC/7/10/Add.4, paras. 45-55)

45. The Special Rapporteur was impressed by the courageousness of the Angolan people she met and their willingness to address many challenges they face following decades of civil war and colonialism, as well as the openness of the Government actors she met with. She recognizes that many in Angola today are able to practice their religion or belief freely and there is in this regard a measure of tolerance within Angolan Society. However, the Special Rapporteur would like to highlight the following conclusions and recommendations.

*Legal framework*

46. Article 9 of law no. 2/04 discriminates against religious minorities and is not in conformity with international standards to which Angola is a party. Viewed in conjunction with article 45 of the Constitution, it may also violate Article 18 (3) of the ICCPR. General Comment 22 provides further guidance on the concept of necessity in article 18 (3) and states that restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

47. As noted earlier, the law contains stringent requirements for registration including membership of 100,000 persons who are domiciled in Angola, from two thirds of the total of the provinces of Angola. It has potential practical implications for religious communities, such as a denial of permission to build places of worship, the closure of places of worship or the prohibition of religious organizations. The Special Rapporteur recommends that the law is reformed and was encouraged by the openness of the Government to review the provisions of the law.

48. Furthermore, law no. 2/04 fails to tackle the problem of religious organizations that are involved in exploitative or engage in harmful practices. Already registered religious organizations in Angola are amongst those accused of exploiting or harming individuals. The Special Rapporteur therefore recommends that exploitative or harmful practices are instead be tackled by the criminal law, in parallel to human rights education programmes.

49. Furthermore, the Special Rapporteur recommends that the Government should review the limitation clauses in articles 18 and 45 of the Angolan Constitution with a view to bringing these provisions into line with article 18 (3) of the International Covenant on Civil and Political Rights, as required by article 2 ICCPR.

### *Religious tolerance*

50. The Government of Angola is obliged to promote religious tolerance and the Special Rapporteur would urge that unsubstantiated statements by officials are not made to the detriment of any religious community. She notes in this regard with satisfaction the statement of President Dos Santos to the UN General Assembly on 25 September 2007 in which he said that “Ecumenism and dialogue among cultures are avenues for action that can be used for the purposes of bringing together, in peace and solidarity, the dominant religions and all the people of the world”.

### *Freedom of religion or belief in Cabinda*

51. In Cabinda, human rights violations by the security forces continue. The Special Rapporteur received a significant number of reports of violence, intimidation and harassment and arrests by State agents of individuals perceived to dispute the leadership of the Catholic Church in Cabinda. These violations and the conflict within the Catholic Church are inter-related and represent challenges to the full enjoyment by all of the right to freedom of religion or belief. The Special Rapporteur was also concerned about the violence and threats of violence perpetrated against the leadership of the Angolan Catholic Church from individuals opposed to the appointment of the Bishop of Cabinda. She would respectfully call on the Government and other relevant parties to respect international human rights law, particularly the right to freedom of religion or belief but also other interrelated and interdependent rights, for example freedom of expression, association, assembly, liberty and security of the person. She would furthermore urge that intra-religious dialogue between opposed religious factions is facilitated.

### *Children accused of witchcraft*

52. On the issue of children accused of witchcraft, the Special Rapporteur was encouraged by the leadership assumed by the National Children’s Institute, together with UNICEF, to address this problem but she also notes that the response to the various problems has been isolated and fragmented, aside from the Zaire situation. She looks forward to further cooperation from the Government of Angola and UNICEF. In addition, she emphasizes that further human rights education is required, together with a strengthening of the criminal justice system and revisions to the Penal Code, to bring to justice those who abuse children. As regards accusations of witchcraft she notes that the Angolan Penal Code does not prohibit defamation, slander and insult of children, whilst it does so in relation to adults although violence and abandonment are prohibited. The Special Rapporteur welcomes that the proposed new Penal Code classifies forms of violence against children as crimes of a public nature, which would allow prosecutors to bring charges in the face of the passivity of the family. She notes that the absence of Juvenile Justice Courts is one of the constraints on the functioning of the Protection Committees.

### *Closure of mosques and restrictions of other religious communities*

53. The closure of four mosques in January 2006 amounted to an unlawful interference with the right to freedom of worship. The Special Rapporteur recommends that the Government takes greater steps to implement the Constitutional guarantee of freedom of religion or belief which includes ensuring that all branches of Government understand and respect their obligations to uphold this particular right as duty bearers. This may be achieved in part by issuing guidance and instructions to all civil servants and the provision of greater human rights education.

### *Persons under any form of detention*

54. There is an urgent need for consular access to detainees being held at Viana immigration detention centre, as well as access for UNHCR and the International Organization for Migration. Periods of immigration

detention should be reduced and conditions of detention at Viana improved. The Special Rapporteur recognizes current Government efforts to construct improved detention facilities.

*Relations between the Government and OHCHR*

55. Finally the Special Rapporteur recommends that the Government sign a Memorandum of Understanding with the Office of the High Commissioner for Human Rights with a view to establish an office with a full mandate of the High Commissioner, that is promotion and protection of human rights.

## Azerbaijan

### Introduction

During the period under review, the Special Rapporteur on freedom of expression and the Representative of the Secretary General on the human rights of internally displaced persons visited Azerbaijan.

The Special Rapporteur on freedom of expression visited Azerbaijan from 22 to 28 April 2007 (please refer to document A/HRC/7/14/Add.3).

### Conclusions (A/HRC/7/14/Add.3, paras. 60-69)

60. Independent countries emerging from the dissolution of the Soviet Union have been experiencing a period of transition marked by political instability and lack of consistent social growth. They have inherited a legacy of a powerful and centralized State that still influences the behaviour of some State institutions, particularly law enforcement and regulatory agencies, as well as the way relations between the State and the media are structured.

61. The unsettled conflict with Armenian forces over the Nagorny Karabakh region in the 1990s is still a burden for Azerbaijan and its people. The existence of almost a million internally displaced persons and significant material losses, including a large part of territory, are an open wound that may, at times, be used for political ends. Unfortunately, despite some recent efforts, conditions to achieve a peaceful solution of this conflict are still far from being achieved.

62. Owing to impressive economic growth, the present situation leaves the door open to rapid modernization, which should be followed by general social growth. Nonetheless, democracy cannot be consolidated without the free circulation of ideas and opinions ensured by an independent press and media. The public interest is best served by a variety of independent news media, both printed and broadcast, which must be allowed to emerge and operate freely. There is an undeniable need to promote the expression of a number of voices and opinions, still unheard, within Azerbaijani society. In addition, there is a need to encourage dialogue among the various business and social categories and interaction with political actors. Moreover, dialogue among media professionals and other intellectual categories with business stakeholders could pave the way to a greater understanding of their respective positions and expectations, thus ultimately contributing to the end of the current stalemate.

63. Freedom of expression begins at home, and the flow of news across national frontiers cannot be free if the flow of news within those frontiers is not free. Nor can there be any “national sovereignty” over news and opinion. Printed and broadcast media should have unrestricted access to foreign news and information services, and the public should enjoy similar freedom, without interference, to receive foreign publications and broadcasts. National frontiers must be open to foreign journalists, who should be allowed to travel freely throughout the country and have access to both official and unofficial news sources.

64. Journalists, editors and other media workers are often under varying degrees of pressure from those in key institutions, business lobbies and informal associations often acting in close cooperation. In this context, investigative journalism is facing obstacles, especially when it addresses sensitive topics. Correspondents in small towns are even more vulnerable; public authorities are often hostile and the civil society is still unable to react to abuses and provide protection. In order to avoid trouble and violent reactions, numerous media professionals may be forced to work on a sort of “stand-by” mode, limiting their activity to the coverage of statements, communiqués and press conferences. Lack of independence of media professionals thus remains a serious obstacle to freedom of expression.

65. The media environment also suffers from poor financial investments; while national television channels and radios have their own audience, newspapers and other printed press are able to sell only a few thousand copies. Furthermore, the presence of large foreign media groups, in particular from Turkey and the Russian Federation, does not encourage the growth of national media outlets. On the one hand, the dominance of powerful media corporations, often linked to political and business elites, can restrain editorial independence, narrow diversity of opinion and entrench self-censorship. On the other, media enterprises need considerable financial investments to operate not only freely but also effectively; the real challenge consists in maintaining a distance between truly autonomous media professionals and media corporations, which, by definition, are bound to make financial benefits. In this panorama, the survival of the country's rich and varied cultural heritage is at stake because of the prevalence of commercial programmes that prioritize economic return over quality information and other educational and socially-oriented initiatives.

66. According to information gathered by the Special Rapporteur, some sectors of the Ministry of Internal Affairs and of the judiciary appear to exert considerable pressure on the media. In addition to cases of physical violence, the use of defamation trials severely penalized press and media freedom through the imposition of prison terms and heavy fines. Publishers, editors and journalists reported that they practised self-censorship owing to various pressures, including the threat of expensive libel suits. Accusations of defamation included denigration of national symbols, thus systematically reducing room for debate about foreign policy.

67. Bearing in mind the vital role played by the media in creating broad awareness of political, economic and social issues, the fact that many journalists go on trial for defamation charges remains totally unacceptable. Political and public figures continue to sue journalists, although they should, because of their institutional roles, be ready to accept criticism and public scrutiny to a greater extent than the ordinary citizen should.

68. Other categories, including trade unionists, writers, students and in general human rights defenders are also under severe stress; in an oppressing atmosphere of conformism, they are often depicted as traitors and proxies of hostile forces. For the purpose of guaranteeing pluralism, relevant authorities should make sure that both State and private media provide enough room for constructive debate and dialogue on sensitive issues, especially to those groups that rarely have the opportunity to express their opinions to a wide audience.

69. Training for media professionals could help improve the quality of information. Efforts should be made to increase human rights awareness and a culture of independence, openness and impartiality through an ethical approach to journalism. Such a step will not be possible without the financial support of the State, international organizations and private enterprises.

#### Recommendations (A/HRC/7/14/Add.3, paras. 70-79)

70. The Special Rapporteur invites the United Nations, OSCE and other regional bodies to strengthen their efforts together with the concerned countries in order to find a fair and durable solution to the conflict in Nagorny Karabakh. The persistence of this conflict has a negative influence, at the national and regional levels, on the exercise and full enjoyment of freedom of expression, and in particular on freedom of movement.

71. The Special Rapporteur encourages the Government of Azerbaijan and other relevant institutions to consider repealing criminal legislation on defamation and similar offences, especially articles 147, 148 and 323 of the Criminal Code, with the purpose of including it, after an adequate process of revision, in civil law. The existence of an increasing body of law, at the regional and national levels, holding that criminal defamation laws per se are contrary to the right to freedom of expression, and the example provided by countries with a similar historical background, may help the relevant Azerbaijani institutions take such a decision. Civil defamation laws have proven adequate to protect reputations. These laws should include the principle that public figures should tolerate a greater degree of criticism than ordinary citizens, and that the analysis of historical events and national affairs cannot be considered an offence. New legislation will also ensure that fines are proportionate to the offence and do not suffocate media activity.

72. State authorities should be encouraged to follow President Aliyev's example and publicly declare their willingness to renounce legal means to respond to libel and defamation. Alternatively, President Aliyev, using his prerogatives and powers, and with the assistance of the Human Rights Commissioner, could decide to enforce an amnesty on sentences for libel and defamation, and a moratorium to be quickly converted into law.

73. The Special Rapporteur urges the Government of Azerbaijan and relevant national bodies to regard action against impunity of crimes targeting media professionals and opinion makers as one of the main priorities of democratic evolution. In particular, the judiciary should ensure impartial, comprehensive investigations and judgements when law enforcement agencies appear to be involved in crimes against the exercise of freedom of expression and good governance.

74. The Government should take immediate remedial measures, including financial compensation as appropriate, for all media professionals and opinion makers who are victims of violence, in particular whenever law enforcement officials appear to have been involved in these criminal acts.

75. The Special Rapporteur invites the Government to consider appropriate legislation for the establishment of an independent national human rights commission, which would supplement the activities of the Office of the Human Rights Commissioner (ombudsperson), mainly in the effective implementation of the national plan for the promotion and protection of human rights, adopted in December 2006.

76. The Special Rapporteur encourages all stakeholders involved in the exercise of freedom of opinion and expression to find fresh impetus in their work and to show genuine openness and commitment to dialogue with their counterparts. Relevant governmental authorities should speedily carry out human rights training programmes for the benefit of their officials and cadres, in order to bring their performance into line with the development of a true democratic State.

77. The Special Rapporteur calls for a general and broad revision of the laws on television and radio broadcasting. The speedy establishment of an appropriate legal and institutional framework to consider and issue licences to independent broadcasters should be seen as a priority. In this connection, the mandate of the National Television and Radio Council should be made more effective, and the council should be able to work independently. Likewise, the Press Council should be provided with additional human and material resources in order to increase its autonomy.

78. The Parliament needs to legislate on specific and urgent measures for the promotion of the press, whose role, in a period of great technological revolution, remains fundamental for educational purposes, and especially for the development in its readership of a critical approach and analysis of information.

79. Through the support of international organizations, the establishment of a school of journalism could create a favourable environment for the development of journalism ethics. Professional training and financial investments, especially an increase in salaries, could help improve the moral stance of the press and the media industry.

The Representative of the Secretary General on the human rights of internally displaced persons visited Azerbaijan from 2 to 6 April 2007 (please refer to document A/HRC/8/6/Add.2).

### **Conclusions and recommendations** (A/HRC/8/6/Add.2, par. 59-74).

59. The main cause of problems encountered by internally displaced persons in Azerbaijan is the absence of a peaceful and lasting solution to the conflict over Nagorny Karabakh and adjacent occupied territories. As a consequence, they are unable to exercise their right to return voluntarily to their former homes in safety and

dignity. While some have rebuilt their lives elsewhere in Azerbaijan, most continue to live in precarious temporary arrangements and have not yet found a durable solution to their plight.

60. The Representative calls on the international community to renew and intensify its efforts to achieve a peaceful solution and to implement Security Council resolutions calling for the withdrawal of occupying troops and for supporting the return of displaced persons on both sides to their places of origin in safety and dignity. He calls on all parties to put humanitarian concerns before political considerations in order to end the suffering of displaced civilians. He encourages the Government of Azerbaijan to pursue further its chosen path of improving the living conditions of internally displaced persons at their current place of residence or elsewhere in the country, pending a solution to the conflict.

61. After a long period of responses to the needs of internally displaced persons that were insufficient for diverse reasons, the Government, in accordance with the Representative's predecessor's recommendations made during the latter's mission to Azerbaijan in 1998 and in accordance with its responsibility to provide protection and humanitarian assistance to internally displaced persons as recalled by Guiding Principle 3, has begun to implement comprehensive strategies to ensure that all human rights of the displaced are respected and their basic needs met. Given the magnitude of the problem of forced displacement in Azerbaijan, the Representative was impressed by the Government's achievements, which compare very favourably with national responses in many other countries affected by internal displacement. The Government's unqualified recognition of its responsibility for the protection of and assistance to the displaced, its extensive investment in improving their welfare, the priority it places on the issue as demonstrated by the anchoring of main responsibilities and coordination in the Deputy Prime Minister's office, and its smooth cooperation with the international community should all be acknowledged.

62. The Representative calls on the Government of Azerbaijan to proceed with and strengthen its implementation of the 2004 State program. He encourages the international community to support the Government's effort in this regard. At the same time, the Representative recommends that the Government and international and non-governmental organizations continue to deliver direct humanitarian assistance, grant allowances in cash and in kind, and exempt displaced persons from payments for public services. Such benefits have gone a long way to alleviating the often very difficult situation of internally displaced persons, removing them would probably put displaced persons in a situation significantly worse than that of the resident population.

63. Significant progress has been made in resettling internally displaced persons from some of the most precarious shelters to specifically constructed compact settlements. However, the majority of displaced persons continue to live in substandard shelters, including in tents, mud huts and railway cars.

64. The Representative encourages the Government to realize its intention to close remaining tent and railway camps by the end of the year. In order to increase the success of its resettlement program, the Representative recommends that the Government invite persons to be resettled, including women, to participate in the planning of the location, design and equipment of new compact settlements, and that competent authorities inform communities of internally displaced persons in advance of the conditions awaiting them. The location of new settlements should be chosen so as to avoid endangering the physical security of displaced persons due to proximity to the ceasefire line. Likewise, internally displaced persons should not be cut off from their current places of employment. The Representative also suggests revisiting settlements already in use to take stock, in consultation with their inhabitants, of outstanding challenges to be addressed. He encourages international agencies to lend their expertise and other support for this purpose.

65. Many internally displaced persons living in urban centres continue to suffer from substandard conditions of buildings, in particular the lack of sanitation and harmful overcrowding. The Representative welcomes the Government's plan to address the needs of urban internally displaced persons whose basic needs are not met and who are not targeted by the resettlement program. It may be expedient to adopt a



comprehensive program for displaced persons in urban areas, centering on the rehabilitation of collective shelters and the provision of appropriate alternative accommodation.

66. Building on the Government's ongoing efforts to address prevailing housing problems, the main challenge now is the creation of livelihoods for internally displaced persons, particularly in rural areas, where employment opportunities are scarce. The Representative observed that many displaced persons seemed to be suffering from dependency syndrome. Experience has shown that displaced persons who have been idle for many years lose their capacity to become productive members of society again and to rebuild their lives once return is possible.

67. The Representative urges the Government to ensure that new settlements are suitable for agricultural purposes and that economic opportunities are foreseen in the planning. He reiterates his predecessor's recommendation that efforts be made to create, improve and expand income-generating activities, skills training and microcredit programs for internally displaced persons, with particular attention to be paid to women, with the aim of reducing their vulnerability, increasing their self-reliance and preparing them for return and reintegration. The Representative appeals to the Government and to international agencies to ensure that the needs and concerns of internally displaced persons are adequately reflected in general policies and programs, including those for poverty reduction.

68. The Representative welcomes the Government's new policy of moving forward from segregated schools for internally displaced persons in urban areas. Although there are indications that such persons attending separate schools are disadvantaged, despite notable Government efforts, by an overall lower quality of education provided to them, and that displaced children may make less use of higher education opportunities than the resident population, the absence of reliable data does not permit unambiguous conclusions nor, more importantly, targeted reforms.

69. The Representative supports a suggestion by the Minister for Education that the level and quality of education of internally displaced persons be studied, with the aim of filling remaining gaps through specific programs implemented in cooperation with the international community. He encourages mixed schooling with local children wherever feasible.

70. The Representative noted with concern that the special needs of elderly, traumatized and mentally ill displaced persons were insufficiently addressed. Elderly internally displaced persons seemed to be at a disadvantage compared to their non-displaced peers, owing to a variety of factors, such as difficulties in adjusting and diminished family support due to the impoverishment of their children. The Representative observed that serious mental-health issues were prevalent among the displaced population. He received indications that, in addition to trauma caused by the violence that triggered the displacement, feelings of insecurity, homelessness and anxiety about the future, as well as severe poverty and stressful, overcrowded living conditions lay at their origin; however, he was informed that reliable relevant data did not exist.

71. The Representative concluded that specific surveys and needs assessments, meeting international standards, into the situation of elderly and mentally ill internally displaced persons and their access to counseling and appropriate medical care needed to be conducted. He encouraged the Government, in close cooperation with competent international agencies, to take the lead in designing effective responses, and welcomed donor interest in funding programs based on reliable data. Both general and specific Government programs should pay special attention to particularly vulnerable groups among internally displaced persons, including by continuing and increasing humanitarian assistance to persons unlikely to become self-sufficient on their own.

72. The Representative welcomes the Government's early-return planning and is encouraged by the intention of competent United Nations agencies as well as donors to support the plan. He shares the realistic view of the Government that return will not be possible immediately and should be conducted through a

phased approach. He reiterates that, in accordance with international law, eventual return and local integration are not mutually exclusive, but rather reinforce each other, as productive, active members of society are more likely to muster the strength and possess the skills needed to rebuild their communities of origin.

73. The Representative welcomes the Government's affirmation of the principle of voluntary return in safety and dignity, as well as its readiness to shoulder the burden of mine clearance and reconstruction of the occupied territories, and of facilitating the return and reintegration of the displaced. He urges all concerned actors to plan and implement any return-related activities on the basis of international law, including those as set out in the Guiding Principles on Internal Displacement. A peaceful solution to the conflict is of paramount importance, as renewed hostilities are likely to engender additional displacement and would complicate the already daunting tasks of mine clearance and reconstruction. Mechanisms for property restitution, reconstruction or compensation should be put in place at an early stage. The participation and the informing of affected individuals and groups must be ensured during all phases of planning and implementation of the return process, including when return is not yet imminent, in order to keep the expectations of displaced persons realistic.

74. Despite the assumption of many responsibilities, the Government informed the Representative of the necessity of continued international support, to a lesser extent in the form of financial contributions and more in the areas of technical expertise and capacity-building. The Representative encourages the international community to continue to support the Government in making sure that the outstanding needs of internally displaced persons are fully addressed. Humanitarian assistance may continue to be required to a lesser extent as the Government scales up its own investment. The Representative sees the main role of international and non-governmental organizations as contributing technical expertise, monitoring progress and providing technical assistance, for example for needs assessment surveys, in particular in the areas of livelihoods and economic opportunities for the displaced; in health, including mental health; and in education. He also feels that international actors, in particular the United Nations country team, have an important role to play in assisting the Government and advising on a rights-based approach in its return planning.

## Bolivia

### Introduction

During the period under review, the Special Rapporteur on the right to food visited Bolivia from 28 April to 8 May 2007 (please refer to document A/HRC/7/5/Add.2).

### Conclusions and recommendations (A/HRC/7/5/Add.2, paras. 58-59)

58. The Special Rapporteur found that Bolivia was in a dramatic moment of transition. Concrete change is essential to resolve serious social crisis and past failures to eradicate malnutrition and extreme poverty. He was impressed by the efforts of the current Government to focus attention on the tragedy of malnutrition and extreme poverty that affects such a large proportion of the population. He welcomes the President's success in increasing the budget of the Government to ensure that all Bolivians benefit from its oil and gas exports. Redistribution of some of the benefits of Bolivia's natural wealth should enable the Government to begin to redress expanding inequalities and help to realize the right to food for all Bolivians. The adoption of the new constitution that recognizes the right to food of all Bolivians would be an important step towards this change.

59. Finally, the Special Rapporteur would like to offer some recommendations:

(a) The new constitution, recognizing the right to food and the right to water as fundamental rights, should be adopted. It would provide a useful framework for the right to food in Bolivia. The practical implications of its main principles, such as the recognition of the direct applicability of all human rights, including the rights to food and water, and of the international human rights treaties, should be explained through a national campaign.

(b) Framework laws on the right to food and the right to water should be adopted to fully entrench these rights, and allow for the identification of concrete goals, monitoring mechanisms and the allocation of responsibilities across all relevant ministries. Due consideration should be given to the Committee on Economic, Social and Cultural Rights general comment No. 12 (1999) on the right to adequate food (art. 11) and the FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security. All relevant actors should participate in this process, including the Government, the Office of the Ombudsman, civil society, including social movements, and all the United Nations agencies.

(c) Mechanisms of empowerment and accountability, and the possibility for victims to have access to effective remedies in case of violations of the right to food should be strengthened. The administration of justice should be more transparent and available for victims, including indigenous communities. The Office of the Ombudsman should create a special unit working on the right to food and the right to water, provided with adequate human and financial resources. The Government should take due account of all the recommendations of the Ombudsman.

(d) A comprehensive national development strategy for food security and food sovereignty, framed around the right to food, should be elaborated and implemented. The strategy should reflect the obligations of the State to respect, protect, and fulfil the right to food without discrimination. The strategy should focus on eradicating malnutrition and on reversing the extreme inequality that has resulted from export-orientated trade in agriculture, by investing in small-scale peasant agriculture, implementing effective agrarian reform and protecting the rights of peasants and indigenous peoples over their land, water and own seeds.

(e) The Government should accord the maximum of available resources to ensure that constant progress is made in combating the tragedy of malnutrition and extreme poverty. This must include directing new resources from the hydrocarbon tax directly to the Zero Malnutrition Programme and the programme *Renta Vitalicia Dignidad*, both at the national level and at the municipal level. As 60 per cent of the increased State revenues from the direct hydrocarbon tax is allocated directly to municipalities and *prefecturas*, these regional administrations must be encouraged to direct these funds towards these programme priorities. The progressive realization of the right to food should be monitored as part of the Government's national policy. Indicators

should include not only statistics on malnutrition, but also statistics on under-nourishment, poverty and inequality.

(f) The eradication of slave-like conditions of bonded labour must be a priority and all labourers should be freed from their debt or other forms of bondage. The programme of agrarian reform should also be speeded up to regularize land titles, improve protection of the lands of indigenous communities and improve access to land for *campesinos*, communities and rural families.

## **Bosnia and Herzegovina**

### **Introduction**

During the period under review, the Special Rapporteur on the right to education visited Bosnia and Herzegovina from 24 September to 3 October 2007 ( please refer to document A/HRC/8/10/Add.4).

### **Conclusions and recommendations** (A/HRC/8/10/Add.4, par. 104-109).

104. The Special Rapporteur recommends that the central Government, entity and cantonal authorities:

(a) Implement the first stage of the World Program for Human Rights Education, approved by the General Assembly;

(b) Define a comprehensive policy that involves education authorities at all levels on equal access to primary education. This policy must define the responsibilities of each education authority, at the national, entity, cantonal and municipality levels, as well as the concrete measures that should be adopted by each of them;

(c) Adopt effective measures to promptly harmonize lower-level legislation with the different framework laws on education. These measures should include operational guidelines addressed to all actors involved in the educative process, in order to facilitate the task of implementation;

(d) Develop a plan of action to abolish the educational modalities and processes based on assimilation and segregation, especially those known as “two schools under one roof”;

(e) Establish a national program for the development and application of education indicators in close cooperation with State bodies and entities, cantons and municipalities. These indicators should guide public policies regarding education and determine the factors that form the basis of discrimination, segregation and assimilation;

(f) Invest more resources in infrastructure for education, including that for primary, secondary and tertiary education;

(g) Provide support for schools through financial means and expert support, for the implementation of the framework laws;

(h) Establish a national program for training professional staff in the education system, which should be based on intercultural education;

(i) Provide support for teachers, through professional development, for the implementation of the framework laws.

105. Universities responsible for teacher training should include in their study programs intercultural education and improvement of practical programs in teacher training curricula. Universities should evaluate the possibility of including teaching practices in the syllabus of programs aimed at instructing teachers.

106. The Special Rapporteur recommends that the international community, donor countries and institutions: Support the implementation of the Agency for Preschool, Primary and Secondary Education, as well as teacher training programs, by funding and by building capacities, including technical assistance Offer technical and financial assistance for the development of a plan of action to abolish the educational modalities and processes based on assimilation and segregation, especially those known as “two schools under one roof”

107. The Special Rapporteur recommends that civil society organizations strengthen and expand networks of activists working on the right to education, in order to allow progress in awareness raising and sensitivity to current needs of the right to education.

108. Students should establish a national independent organization for the defence, protection and promotion of their rights.

109. Organizations and trade unions should get involved in the education reform process and the fight against all forms and types of discrimination in schools, including segregation and assimilation practices.

## **Burkina Faso**

### **Introduction**

During the period under review, the Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights visited Burkina Faso from 23 to 27 April 2007 (please refer to document A/HRC/7/9/Add.1).

### **Conclusions and recommendations** (A/HRC/7/9/Add.1, paras. 55-61)

55. On the basis of the numerous discussions held and observations made during his visit, the independent expert concluded that there is a clear and demonstrable political commitment by the Government of Burkina Faso to address human rights challenges, as manifested by progressive legislation and recent institutional improvements. Significant efforts have been undertaken to improve the enforcement of human rights principles enshrined in international and domestic law, such as equality and non-discrimination. However, formal law faces major implementation problems in areas where it is in contradiction with Burkina Faso's traditional cultural context, and in particular with regard to gender equality. The Government and civil society actors are encouraged to continue and increase sensitization efforts in this area, in particular in rural areas and with regard to discrimination against women.

56. Debt relief obtained through the Heavily Indebted Poor Countries and Multilateral Debt Relief initiatives has substantially reduced Burkina Faso's foreign debt burden, which currently does not appear to threaten the country's capacity to comply with its human rights obligations. The Government is, however, encouraged to continue its prudent debt policy and to avoid new non-concessional loans to finance its development ambitions. The Government and its international development partners are encouraged to make sure that the national development strategy can be financed to the largest possible extent by grants.

57. In order to strengthen the accountability and participation elements within the foreign debt planning and decision process, recourse to Parliament and civil society advice should be more systematically undertaken. The consultation of human rights actors in particular would be an important added value to the process. This could be achieved through institutionalized civil society participation in the work of the National Public Debt Committee.

58. The achievement of the Millennium Development Goals is the central objective of Burkina Faso's PRSP. However, compliance with the Goals does not automatically engender progress regarding international human rights obligations. Future reviews of the strategy should aim at strengthening the PRSP by clearly stipulating the obligations of the State under the international human rights treaties it has ratified, and by elaborating on the means to implement them. Human rights norms and principles such as equality, non-discrimination, participation, inclusion, accountability and the rule of law should guide and inform the implementation of the PRSP. In this context the independent expert commends the inclusive approach and participatory process adopted in the PRSP.

59. Burkina Faso's civil society organizations are strongly committed to contributing to the PRSP process. However, civil society does not yet have the human and material resources and organizational capacity to comment on, inform and influence all stages of this highly complex process. Empowerment and capacity-building of civil society organizations should be an integral part of the PRSP process. To this end, the Government and the donor community should continue and increase their support to civil society organizations in order to allow their more effective involvement.

60. The ongoing privatization of public enterprises and current negotiations in the area of foreign trade should be guided and informed more systematically by impact assessments that not only include economic and social

objectives but also the State's obligations under international human rights law. With regard to the right to food, the Government should assess the impact of regional trade flows on the ability to provide food for all, and implement trade safeguarding measures if necessary.

61. The production and export subsidies provided by industrialized countries for cotton undermine the development potential of this sector in Burkina Faso. The international community should refrain from this practice, in the context of the international trading system, in order to allow Burkina Faso to accelerate its economic development and its compliance with international obligations in the area of economic, social and cultural rights.



## Burundi

### Introduction

During the period under review, the Independent Expert on the situation of human rights in Burundi visited Burundi from 2 to 8 December 2007 and from 29 June to 12 July 2008 (please refer to document A/HRC/9/14).

### Conclusions and recommendations (A/HRC/9/14, par. 80-93).

#### To the Government of Burundi

80. The independent expert urges the Government to allow all political parties to carry out their political activities without undue restrictions. He further urges the Government to allow the registration of all political parties in compliance with the Constitution.

81. The independent expert calls upon the Government and FNL-Palipehutu to continue their work in all mechanisms foreseen by the Comprehensive Ceasefire Agreement in order to implement it fully and without delay.

82. The independent expert welcomes the signature of the peace building project by the Government and the United Nations to organize national consultations on the establishment of a truth and reconciliation commission, and urges the Government to speed up the process of establishing transitional justice mechanisms, in fulfillment of its international undertakings to this end.

83. The independent expert calls upon the Burundian authorities to investigate incidents of sexual violence fully and to bring those who have committed such crimes to justice.

84. The independent expert commends the Government of Burundi and the Peace building Fund and the Office of the United Nations High Commissioner for Human Rights for supporting the process to establish a national human rights commission, and urges the Government and Parliament to ensure that the law enabling the commission is in line with the Paris Principles.

85. Since his previous report to the General Assembly, the independent expert notes that no progress has been made by the Government of Burundi to conclude its investigations into the Gatumba massacre and bring the perpetrators to justice. He reiterates his concern to the Government of Burundi and the international community on this matter.

86. The independent expert deplores the failure of the Government to prosecute individuals involved in the Musinga massacre and urges the authorities to bring those responsible for it to justice.

87. The independent expert calls upon the Government to investigate all human rights violations and bring its perpetrators to justice.

#### To the international community

88. The independent expert urges the international community to use all means possible to ensure that the process leading to the 2010 elections, and the elections themselves, are free and fair.

89. The independent expert thanks the international community for its support to reform the justice system in Burundi, particularly the Peace building Commission. He urges it to redouble its efforts to allow the country to achieve an impartial justice system with a solid infrastructure.

90. The independent expert calls on the United Nations and the Regional Initiative on Burundi to remain engaged with the Government of Burundi in order to better assess the situation and provide technical assistance to the Government prior to the organization of the elections in 2010.

91. The independent expert urges the international community to press the Government of Burundi to complete the investigation into the Gatumba and Musinga massacres and to prosecute the perpetrators.

92. The independent expert encourages the Peace building Commission to continue supporting the Government of Burundi in disbursing the necessary funds to implement the development plan for the period 2007-2008. In this regard, he calls upon the Government of Burundi and the implementing partners to strengthen their cooperation and coordination in order to avoid any delay in the reconstruction of Burundi.

93. The independent expert commends the international community for its pledges. He urges the community of donors to release the funds pledged at the Paris, Geneva, Brussels and Bujumbura conferences, and recommends that the international community support the efforts of the Government of Burundi to respect and promote human rights.

## Cambodia

### Introduction

During the period under review, the Special Representative of the Secretary-General on human rights in Cambodia visited the country from 29 to 31 March 2007 (please refer to document A/HRC/7/42).

### Conclusions and recommendations (A/HRC/7/42, paras. 99-104)

99. Year after year, the Special Representative's predecessors and others have addressed the problems of the legal and judicial system in Cambodia and made numerous recommendations, to no avail. The Government has no incentives for reform, as the international community continues to make large financial contributions regardless of widespread violations of human rights.

100. A distinguished Cambodian legal scholar recently commented that "the Government is the least serious about the legal and judicial programme". The World Bank shelved a project because of "a lack of senior-level commitment to the implementation of a concerted legal and judicial reform agenda within the Executive and Judicial branches of the Government". Another donor has said that numerous plans and councils on good governance are "little more than a studied attempt to tell donors what they want to hear".

Recommendations to the Government

101. The Government has primary responsibility for the rule of law. The Special Representative would stress the following recommendations, many of which were made previously:

- The Government must respect the independence of all prosecutors and judges, including those (and defenders and administrative staff) within ECCC.
- The Government must devote more resources to the justice sector. Efforts to train lawyers and to recruit prosecutors and judges should continue and the aim should be for everyone to be within easy reach of a court and for delays in proceedings to be minimized.
- The Government should appoint a committee drawn from Government, the BAKC, human rights NGOs and local and foreign experts, to advise on the organization of legal aid. Its recommendations should be implemented speedily.
- The Government must promote respect for the rule of law within the State and society. It must set the example, as guardian of the Constitution and the law. Laws must be implemented fairly and fully and effective remedies for the violation of rights ensured, if people are to trust the notion of rule of law.
- The Government must urgently enact laws on demonstrations and anti-corruption, ensuring that they comply with the Constitution and human rights standards.
- The Government must protect the rights of indigenous persons and others who, due to illiteracy, customary practices and expectations, communal forms of organizations etc., are not familiar with the law or its procedures, the rules for making of economic transactions or with the market economy. Steps must be taken to ensure that State authorities, including communes, are no longer involved in transactions of dubious morality or law that undermine the rights of these communities and individuals.
- The Government must do all it can to stop forced evictions. It must never be complicit in unlawful evictions. Internationally accepted guidelines must be observed, including the principles that nobody should be made homeless as a result of development-based evictions, the full and informed consent of those targeted for eviction. Evictions should be carried out only in exceptional circumstances, and solely for the purpose of promoting the general welfare in a

democratic society. The use of force should be prohibited. No one should be imprisoned in relation to protecting their rights to land and housing and anyone detained in this context should be released. A moratorium on forced evictions should be declared, to allow the determination of the legality of land claims to be made in an objective and fair manner.

- The Government must establish an independent authority to receive complaints about maladministration by the State (including institutions of justice). A Human Rights Commission fully established on the Paris Principles could be given this task.
- The Government must respect the duty and right of civil society to promote and protect human rights and observe United Nations resolutions on the rights of human rights defenders. No restrictions should be placed on reasonable activities of local communities and non-governmental associations.
- The Government must deal fairly with specific cases brought to its attention in recent reports of the Special Representatives and human rights organizations, including the circumstances in which the Venerable Tim Sakhorn disappeared. These steps should include justice for the alleged killers of union leader Chea Vichea and bringing to justice his real killers.

#### Recommendations to civil society actors

102. The Special Representative stresses the important contribution of civil society (including non-governmental organizations, lawyers, universities, think tanks and other educational and research institutions) to the common effort to establish the rule of the law. He encourages them to pursue their efforts, with determination, patience and courage, in a spirit of openness, dialogue and cooperation with the government authorities. They should continue to provide people with information about human rights, institutions and remedies, and with a voice when the administration, lawmakers and the judiciary do not listen. Discussion with the people about the Special Representative's reports and feedback should be encouraged.

103. Educational institutions and NGOs should engage the public, through seminars, media and publications, on the procedures and practices as well as the rulings and judgements of ECCC, to create awareness of the meaning and importance of the rule of law.

#### Recommendations to the international community, including United Nations institutions

104. To be seriously considered and implemented by the Government, the recommendations of the successive Special Representatives need to be endorsed and supported by foreign Governments and international agencies.

- The international community should set up or facilitate the setting up of an independent expert commission to review the working of the legal and judicial system, to make recommendations, and to report annually to the international community and the Royal Government of Cambodia, one month ahead of the consultations between the Government and the donors and lenders. The commission should develop effective and realistic criteria to assess progress, paying particular attention to the enforcement of the law and the independence of the prosecution and judges. The report should form the basis of consultations.
- Foreign Governments or agencies providing assistance in drafting laws must ensure that the law they are proposing is consistent with human rights. This raises no difficulties in respect of Cambodia's sovereignty. This is also an international obligation of each and every Member State of the United Nations, under the Charter and under the treaties they have ratified.
- Foreign embassies, collectively or bilaterally, should engage the Government in dialogues on human rights and urge the Government to stop the most egregious violations. They should emphasize that respect for human rights is an essential basis of the partnership between them and

the Cambodian State and people, and for the pursuance of a development process that places human beings and environment at its heart, rather than unlimited profit and greed, at its heart.

- Since the Constitutional Council has stated that human rights treaties are binding, it is necessary that the decisions of the treaty bodies and of international and foreign courts and tribunals should be taken into account when applying the law. This approach would reinforce the impact that ECCC is expected to have on improvements in the Cambodian legal and judicial system. OHCHR should translate and disseminate major interpretations and conclusions of the treaty bodies.

## Canada

### Introduction

During the period under review, the Special Rapporteur on adequate housing visited Canada from 8 to 19 October 2007 (please refer to document A/HRC/7/16/Add.4).

### Preliminary recommendations (A/HRC/7/16/Add.4, paras. 17-26)

17. At this stage, the Special Rapporteur would like to make these preliminary recommendations:

18. In order to comply with human rights standards and to efficiently address adequate housing for its population, Canada needs to base its policies and programs on the human rights framework and fully recognize the right to adequate housing.

19. Canada needs to commit stable and long-term funding to a comprehensive national housing strategy, and to co-ordinate action among the provinces and territories. Canada needs 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.

20. The Federal Government should immediately extend and enhance the national homelessness programme and the Residential Rehabilitation Assistance Programme.

21. To address effectively the more critical obstacles to enjoyment of the right to adequate housing, Canada needs a comprehensive and properly-funded poverty reduction strategy respectful of its human rights obligations.

22. The Federal Government needs to work with the provinces and territories to create a consistent framework of tenant protection and rent regulation laws that meet the standards set in international housing rights law.

23. Specific funding should be directed to groups particularly vulnerable to discrimination including women, Aboriginal people, the elderly, youth and migrants. The housing continuum concept and a plan to make available various forms of housing including transitional and supportive housing should be nationally adopted.

24. The Federal Government should commit the funding and resources to ensure access to potable water and proper sanitation.

25. 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. Authorities should genuinely engage with Aboriginal communities to resolve land claims such as in the Lubicon region.

26. Vancouver Olympic officials, and other authorities, need to implement specific strategies on housing and homelessness, and to commit funding and resources to support its targets, including 3,200 affordable homes. The social development plan should be designed and implemented with public participation, so progress can be monitored.

## Central African Republic

### Introduction

During the period under review, the Representative of the Secretary General on the human rights of internally displaced persons visited the Central African Republic from 24 February to 3 March 2009 (please refer to document A/HRC/8/6/Add.1).

### Conclusions and recommendations (A/HRC/8/6/Add.1, par.78-88).

78. Following his visit, the Representative of the Secretary-General concludes that the Central African Republic is experiencing a grave protection crisis, highlighted by the very large number of displaced persons, and that the country is in an emergency situation. Many displaced persons are in urgent need of protection and assistance, in particular with regard to the enjoyment of their rights to housing, food and access to health care and education. He is of the view that if appropriate emergency measures are not taken, the protection crisis may well become a large-scale humanitarian crisis which will be difficult to overcome in a country already beset by serious underdevelopment.

79. In the Representative's view, the violence prevailing in the north of the Central African Republic is the main cause of the population displacement. This violence is linked above all to abuses committed against civilians and their property, including extrajudicial, arbitrary or summary executions and the burning of entire villages during security operations, forcing the population to flee for their own protection. According to information obtained from humanitarian agencies and the statements made by many displaced persons, these violations are mainly committed by security forces, and in particular the Presidential Guard. The actions of bandits and highway robbers also contribute to the climate of insecurity and are forcing the population to flee. He wishes to remind the authorities that the State has primary responsibility for protecting its citizens, and that it is incumbent upon it to take all measures to ensure the protection of the civilian population.

80. The Representative is worried about the situation in which displaced persons live, and considers it to be a cause for deep concern. Such persons are completely destitute and very often no longer have housing, drinking water or health care, while their children do not have access to education. In some cases, they live in considerable food insecurity and could rapidly become undernourished.

81. For fear of being stopped and brutalized by the members of the security forces, displaced persons do not dare to go to their villages in search of water or to urban centers for medical care. Often viewed by the security forces as rebels or collaborators, internally displaced persons, in particular young men, are also stigmatized, thereby exacerbating the constant sense of insecurity in which the population lives and limiting individual freedom of movement. Accordingly, the Representative shares the view of many displaced victims who consider that conditions are not yet ripe for a permanent return to their usual places of residence.

82. The Representative is especially concerned about the situation of children recruited by certain rebel factions, and he points out that the Guiding Principles (Principle 13) stipulate that in no circumstances shall displaced children be recruited by armed forces.

83. The Representative welcomes the fact that the various stakeholders, including the Government and representatives of the international community, have become aware of the seriousness of the problem of internal displacement in the Central African Republic. In order to provide a lasting solution to the issue and to protect and assist the victims, the Representative recommends a three-pronged strategy: continued political dialogue between the Government and the various armed groups in order to address the root causes of displacement; strengthened humanitarian assistance and protection from international organizations in order to facilitate the protection of the population affected by abuses; and implementation of a targeted development

program in the north of the country in order to attack the root causes of the crisis, which lie in the marginalization and underdevelopment of the region.

84. In particular, the Representative shares the opinion expressed by the President of the Central African Republic, who said he was convinced that dialogue was the sole means of ending the conflict plaguing the country and that recourse to arms alone was not a viable option. He welcomes the fact that the authorities have taken the initiative of starting a dialogue with certain armed groups, and encourages them to broaden the dialogue further by including all armed groups and the various sectors of civil society. He believes that, while political dialogue with the various armed groups operating in the country is essential to achieving a lasting peace, dialogue with citizens, including displaced persons, is equally important. Such dialogue and consultation with displaced populations must be open and constructive in order to restore the confidence which alone will make it possible to envisage their return to their homes.

85. In this context, the Representative recommends that the authorities should:

(a) When planning and carrying out security operations, respect the fundamental distinction between combatants and civilians and refrain from all acts prohibited by international humanitarian law and international human rights law, including attacks on civilian persons and objects, the burning of villages, summary and extrajudicial executions, and acts of torture and ill-treatment;

(b) Make an unambiguous statement at the highest level defining the role of the security forces and the limitations on their behaviour and reminding them of their obligations under international humanitarian law. At the same time, a proactive training and awareness program in international humanitarian law and human rights for members of the security forces should be started without delay;

(c) Given the many violations of international law attributed to some members of the security forces, in particular the Presidential Guard, effectively combat impunity by conducting inquiries and bringing to justice the main perpetrators of human rights violations, including arbitrary displacement. In this connection, the Representative welcomes the recent initiatives of the armed forces aimed at transferring officers responsible for human rights violations from the regions concerned. However, he stresses the fact that the removal of the personnel in question is not sufficient in itself, because it does not do justice to the victims and deprives them of their right to compensation;

(d) Ensure that displaced persons have access to health-care services and education in areas under government control, for example by organizing protected convoys and promoting the use of mobile clinics;

(e) Re-establish and strengthen the presence of the State at all levels in the north of the country by restoring basic services in education, justice, the police and health care as a matter of priority and encouraging devolved and decentralized authorities to return to their localities;

(f) Ratify without delay the Pact on Security, Stability and Development in the Great Lakes Region and the related protocols, in particular the Protocol on Protection and Assistance to Internally Displaced Persons, which the Central African Republic helped to draft, and revise national legislation on the basis of the principles and obligations of developed States in this regard;

(g) Pay special attention to the needs of displaced children, and in that connection ratify as soon as possible the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(h) Continue to cooperate with the international community in its efforts to protect and assist displaced persons;

(i) Make clear and complete information available to displaced persons so that they can take informed decisions on their future, and, if they so wish, facilitate their return to their localities of origin in security and dignity;

(j) Address the root causes of the crisis, such as the marginalization of or discrimination against certain regions, which is evidenced in underinvestment and a concentration of wealth around the capital and in the south of the country. To do so, the authorities must ensure more equitable access to the country's resources, giving particular attention to the areas in greatest difficulty.

86. The Representative recommends that the armed groups should:



(a) Respect international humanitarian law. In particular, they should respect the fundamental distinction between combatants and civilians and refrain from all acts prohibited by international humanitarian law, such as making use of civilians to underpin their operations, recruiting children into their ranks and exposing the civilian population to the risk of reprisals;

(b) Embark without delay on the immediate disarming and rehabilitation of child soldiers, in close cooperation with international organizations which specialize in this area.

87. The Representative recommends that the United Nations and humanitarian and development organizations should:

(a) Increase their presence on the ground, especially in the areas which are affected by the conflict and contain large numbers of displaced persons, in order to protect and assist them in case of need;

(b) Continue to provide humanitarian assistance to displaced populations, in particular non-food products and seed, so that they can continue to farm;

(c) At the approach of the rainy season, make a special effort to provide displaced victims with equipment so that they can build structures in which they can take shelter in bad weather;

(d) Work with the Government to train and heighten the awareness of the security forces, in particular as concerns international humanitarian law, human rights and the Guiding Principles on Internal Displacement;

(e) Step up activities to protect displaced persons, in particular by strengthening the protection cluster and ensuring more regular monitoring of the human rights situation by BONUCA's human rights division;

(f) Provide substantial support to efforts to demobilize and rehabilitate child soldiers;

(g) Support the Government's efforts to strengthen the presence of State institutions on the ground, in particular in the areas of education, justice, the police and health care;

(h) Provide substantial support to a targeted development program for the north of the country so as to combat the root causes of the crisis, which lie in the marginalization and underdevelopment of the region.

88. The Representative recommends that donors should continue to support programs to benefit internally displaced persons, and increase their assistance substantially so as to underpin the continuing presence of agencies and organizations active in the area.

## Chile

### Introduction

During the period under review, the Working Group on the use of mercenaries visited Chile from 9 to 13 July 2007 (please refer to document A/HRC/7/7/Add.4).

### Conclusions (A/HRC/7/7/Add.4, paras. 54-71)

54. The Working Group wishes to thank the Chilean authorities for their invitation to visit Chile and their cooperation, and commends the State for its efforts to regulate private security companies.

55. The Working Group recognizes that the preliminary draft of a bill on Chile's accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which was deposited in the Defence Commission of the Chamber of Deputies, cannot be adopted without the necessary amendments that will be recommended by the inter-agency working party. The latter is charged with examining the measures included in Chile's domestic legislation with a view to developing an efficient and up-to-date system of rules for the criminalization, deterrence and punishment of new practices related to mercenarism. In this connection, if the Government considers it necessary, it may request technical assistance from the Office of the United Nations High Commissioner for Human Rights in preparing for the legal classification of mercenarism as a criminal offence and its inclusion in domestic legislation.

56. The Working Group believes that the adoption of a new private security act, which is currently being drafted in the Ministry of the Interior with technical support from the University of Chile and which will replace the current law concerning private guards, represents an opportunity to strengthen the existing legislation, regulation and control of private security companies in the country, as well as to improve public policies on private security. The preliminary drafts of bills concerning reform of the military career will help to discourage military personnel from recruitment by those private companies.

57. The Working Group expressed concern at the recruitment and training of hundreds of Chileans by private security companies in order to carry out duties in Iraq. It believes that the use of Chilean "independent contractors" or "security guards" by transnational private security companies in Iraq represents new expressions of mercenarism in the twenty-first century.

58. The aim of the contracts can be interpreted as generally to implement the same features or other very similar features as those specified in article 1 of the 1989 Convention. The Chilean "independent contractors" were recruited abroad and were motivated by the desire for private gain to offer their services "in countries in a state of war, in which there are occupation forces and pockets of resistance". If attacked, they could, at any time, become combatants in an armed conflict (offering their services in a highly dangerous environment that poses a risk to their safety and/or personal integrity) and could take part in hostilities. Contrary to article 47 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, the 1989 Convention does not specify what is meant by the word "directly". Independent contractors may very well carry out passive functions that would involve taking part in hostilities.

59. Some Chileans recruited by the private companies in question and who had been in Iraq informed the Working Group that they had been armed with automatic rifles, sometimes with anti-tank bazookas, that they had returned fire every time they had been attacked by insurgents and had even used weapons banned by international laws on war. All this indicates that they were being prepared to take part in hostilities and that the line between passive and active participation in hostilities in an armed conflict or post-conflict area is very tenuous. Chileans recruited in this manner are neither nationals nor residents of a country that is a party to the

conflict. Moreover, they are not soldiers, members of the United States Army, parties to the conflict or civilians - given that they are armed - and have not been sent by a State on official duty.

60. The legal subtlety of the matter resides in the fact that Blackwater and Triple Canopy, the contracting companies, admit to working directly on behalf of the State Department of the Government of the United States of America, which had contracted them with the objective of providing protection services in armed conflict or post-conflict zones, such as Afghanistan and Iraq. Once they had obtained a contract from the United States Government, these companies, in turn, subcontracted other companies abroad. José Miguel Pizarro's companies, Grupo Táctico, Neskowin and Global Guards, which selected and contracted Chileans, were based either in Uruguay or Panama. Neskowin had signed a contract with Blackwater, and Global Guards had signed one with Triple Canopy. Of course, information concerning the nature of the organizational relationship or contracts between Neskowin and Blackwater, on the one hand, and between Global Guards and Triple Canopy, on the other, is considered to be private, and the companies are not willing to disclose it.

61. The activities of the companies that hired Chileans as private "security guards" allegedly constitute practices related to mercenarism, such as the recruitment, training, financing and use of individuals as part of a profit-making arrangement.

62. It would be interesting to know to which authority of the Iraqi Government, the coalition in Iraq or the United States Government the companies that contracted Chileans were accountable in the event their employees or the companies themselves committed criminal offences. In this maze of contracting and subcontracting it would also be interesting to know whether there are any mechanisms available to Chileans whose rights have been violated and to which American authorities they can submit their complaints.

63. The Working Group has received allegations of contractual irregularities, poor working conditions, overcrowding, excessively long working hours, non-payment of wages, degrading treatment and isolation, as well as the neglect of basic needs, such as health and hygiene. This is despite the fact that the persons in question had been hired as security guards, received military training in the United States, in Iraq or in a third country, and ended up performing functions not provided for in their contracts.

64. José Miguel Pizarro's companies apparently took advantage of lacunae and legal loopholes in Chilean domestic legislation to hire Chilean nationals as private "security guards" for American transnational corporations and to send them to armed conflict or post-conflict areas, such as those in Afghanistan and Iraq.

65. The Working Group expressed concern at information it had received indicating that new Chilean job placement agencies apparently continue to recruit former Chilean military and police personnel for American private military and security companies in order to work as private "security guards" in Iraq.

66. The fact that, despite having reacted promptly to the phenomenon, the Chilean authorities initially treated it as a private matter, along with the fact that the manager of Grupo Táctico, Neskowin and Global Guards continues to pursue similar activities regardless of the cases pending before the ordinary and military courts, may have contributed to a certain climate of "tolerance". This has led to the paradoxical situation in which, on the one hand, the Chilean Government's official position in the Security Council discussions of 2003 was to oppose waging a preventive war in Iraq, and on the other, the fact that some 1,000 former members of the Chilean military and police have taken part in that conflict as "independent contractors".

67. In this regard, the Working Group commends the Chilean authorities for the unambiguous statement of Mr. José A. Viera-Gallo, Minister and Secretary-General of the Presidency, which prompted the Working Group's visit to Chile, and in which Mr. Viera-Gallo underscored the paradoxical nature of the situation in which Chile finds itself. On the one hand, there is the official Chilean position to reject the war in Iraq, and on the other, the current situation in which some 1,000 Chileans are "protecting private security in Iraq (...) and are involved in a dirty war (...) of violent acts in which there are no clear boundaries between friends and

enemies”. In his statement Mr. Viera-Gallo called for “efforts to facilitate Chile’s accession to the Convention” and, at the domestic level, “categorically and unequivocally to classify as a criminal offence actions undertaken by these types of private companies, which are sometimes based in developed countries, to recruit and, in some cases, trick Chileans into fighting wars that are not their own”.

68. The Working Group is aware of the fact that the practices in which some private security companies engage represent new forms of mercenarism and that these may have initially come as a surprise to the Chilean authorities. It is concerned, however, at the failure of the Chilean State to take appropriate steps to protect the right to life and physical integrity of the hundreds of former members of the military and police who were recruited to work in Iraq, as well as deficiencies noted in terms of Chile’s compliance with its obligations under international law.

69. With respect to the transfer of the use of force and/or authority to non-State actors, the Working Group wishes to point out the responsibility of States regarding the privatization of security, which is a public good and a human right. When security is privatized, there is the risk that it will no longer be available as a public service to those who cannot afford to pay for it, thereby violating the right to equity, in the sense that its access by the poorest members of society has been reduced. It should also be borne in mind that private security guards and armed guards do not defend common interests and the common good, but rather the private interests of those who hire and pay them, and in so doing they transform security into a commodity.

70. In conformity with international human rights standards, the privatization of public services must not at any time prevent such services from being made available to the general public in sufficient quantity. Moreover, public services must be accessible to all without discrimination of any kind (economic or information-based); culturally acceptable; and of good quality - in other words, privatization should not result in lower quality services. The privatization process must also be transparent, and information must be disseminated with the aim of ensuring the right to seek, receive and impart information and avoid corruption – an aspect that is often present in the privatization process.

71. With regard to social protests engaged in by indigenous communities in defence of their lands and environmental rights, the Working Group is concerned at the fact that legitimate social protests are being confused with unlawful or terrorist activities, that their leaders are being subjected to accusations and intimidation, and that, when States transfer the use of force and security to private security companies, unlawful acts may be committed.

#### **Recommendations** (A/HRC/7/7/Add.4, para. 72)

72. The Working Group wishes to make the following recommendations:

- (a) That, as soon as possible, the inter-agency working party should complete the study on the domestic criminalization of and enactment of legislation concerning activities related to mercenarism, adopting the broadest possible normative interpretation that includes not only the offence of mercenarism but also its new manifestations;
- (b) That Chile should, without delay, take steps to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
- (c) That the competent authorities, particularly in the military courts, should, without delay, complete investigations into the case still pending concerning the recruitment of private security guards to work in Iraq by the companies Neskowin and Global Guards;
- (d) That urgent measures should be taken to protect the rights of Chilean citizens still in Iraq;
- (e) That efforts should be made to promote the establishment of a body at the highest executive level - ministry or vice-ministry - endowed with authority and charged with monitoring both private security companies and new forms of mercenary activity;
- (f) That steps should be taken to guarantee the universal right of all people to security as a public good through the adoption of a new private security act, which must incorporate the principles of efficiency - in

relations between public and private sectors - and transparency, responsibility and accountability. The new act should also contain measures aimed at providing suitable training to officials responsible for private security (private armed guards and security guards) that includes: human rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the United Nations, as well as the notion of equity in order to ensure the accessibility of security as a public good to the entire population;

(g) That steps should be taken to establish a mechanism, whether a parliamentary committee or a commissioner, with authority to monitor the activities of private security companies and to which complaints may be submitted;

(h) That, as soon as possible, steps should be taken to establish a national human rights institution that conforms to the Paris Principles and whose objective is the promotion and protection of human rights;

(i) That consideration should be given to the possibility of organizing a multidisciplinary seminar in order to disseminate the findings of the inter-agency working party and the report on Chile by the Working Group on mercenaries, with a view to incorporating the recommendations of the seminar into public policy.

## Cuba

### Introduction

During the period under review, the Special Rapporteur on the right to food visited Cuba from 28 October to 6 November 2007 (please refer to document A/HRC/7/5/Add.3).

### Conclusions and recommendations (A/HRC/7/5/Add.3, paras. 77-79)

77. The Special Rapporteur welcomes the declaration which Acting President Raúl Castro Ruz made on 26 July 2007, namely, that the Government will give priority to reform in the agricultural sector, specifically through increasing support to small farmers to increase both livelihoods and production. He remains concerned that external problems, in particular the United States embargo and world food prices, as well as internal contradictions will create major difficulties for the complete realization of the right to food.

78. The Special Rapporteur is very encouraged by Cuba's commitments to increase its cooperation with the Human Rights Council. He welcomes the declaration made by Felipe Pérez Roque, Minister for Foreign Affairs on 10 December 2007 to the effect that Cuba will sign both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights in early 2008 and extend invitations to other special procedures of the Council.

79. The Special Rapporteur makes the following specific recommendations:

(a) The Government of Cuba should continue to strengthen its cooperation with the Council and the United Nations. It should promptly ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It should also extend standing invitations to all special procedures of the Human Rights Council in 2008.

(b) A framework law on the right to food should be adopted, allowing for the identification of concrete goals such as the eradication of malnutrition, the improvement of monitoring mechanisms and the allocation and coordination of responsibilities across all relevant ministries. The drafting of this framework law would represent an excellent opportunity to discuss the possibilities for reforms in the agricultural sector and increase both livelihood and production, while at the same time ensuring access to food for everyone. All relevant actors should participate in this process, including representatives of small farmers, civil society, social movements and United Nations agencies. Due consideration should be given to Right to Food Guidelines of FAO and general comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights on the right to adequate food.

(c) Access to justice in relation to the right to food should be improved. The courts should be mandated to deal with human rights violations, including the right to food. An independent institution charged with receiving and processing complaints and providing remedies for violations, should be established, in accordance with the 2004 Right to Food Guidelines adopted by all FAO Member States, as existing consumer offices fail to address this need.

(d) The constitutional right of every citizen to live in any sector, zone or area should be fully implemented, in conjunction with the right to food of every Cuban. Measures should be taken to facilitate the allocation of the subsidized basket to internal migrants who have moved without properly fulfilling the necessary administrative procedures. All Cubans should receive the subsidized food basket through the *libreta* system, wherever they live.

(e) The Government should prioritize intensification of recent policies to increase agricultural production and efficiency, particularly diversification of food production, use of non-State farming cooperatives, the *organopónico* movement and free supply-and-demand vegetable markets. The Government should enact further steps to ensure that farmers achieve profitable returns, through reductions in the quota system and legalization of secondary markets. Measures should be taken to stimulate capitalization and investment in the agricultural industry and to guarantee the independent operation of cooperatives.

(f) Only around 3 million hectares are cultivated, out of a possible 6 million hectares of fertile land. The *marabú* weed is invading millions of hectares of good land. The Government should implement a national programme to eradicate *marabú* in order to reclaim lost agricultural land and to establish incentives to promote the cultivation and use of this land.

(g) Special attention should be given to the urgent problem of food transport. Food is lost when adequate transport is not available due to lack of fuel or spare parts. At present, not all the more than 18,000 government-run stores receive the food to which they are entitled each month. Reform of the transport system is therefore urgent. Steps should be taken to improve or avoid unreliability and inefficiencies in the transport and food distribution system, and to reduce product loss, for example through decentralization of food production and by moving production closer to consumption points.

(h) In order to combat loss of harvest, the Government should extend the current programme of construction of family silos, currently implemented in only three eastern provinces, to the entire country.

(i) The Government should take further steps to enable individuals to access food that is available, accessible, acceptable, adaptable, and of good quality. Reforms are needed to expand the range and quality of food products available; to ensure food affordability; to ensure an adequate level of animal protein in diets; and to guarantee greater consumer sovereignty. More varied and nutritional food should be included in the basic food basket.

(j) Social security programmes should be strengthened in order to ensure coverage for all, including those that may be neglected under the current system. The Government, United Nations agencies and NGOs must work together to improve the progressive realization of the right to food for vulnerable groups, by intensifying measures to further reduce the prevalence of anaemia, by developing strategies for promoting a healthy diet, and by combating obesity. Data should be collected on a disaggregated basis to facilitate the monitoring of progress.

(k) To the United States, the Special Rapporteur recommends in the strongest way the removal of the illegal embargo against Cuba. Cuba should be granted open access to export markets, and the unnecessary cost and inconvenience that the embargo places on the system of food importation in Cuba should be eliminated. Cuba should be entitled to access the credit facilities of the World Bank, IMF and the Inter-American Development Bank. The travel ban on staff of the World Bank and other international organizations should be lifted, and the inconveniences created for United Nations staff, scientists, civil society members and others working to develop Cuba's capacity to realize the right to food should be eased.

## Democratic People's Republic of Korea

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea presented a report to the Human Rights Council (please refer to document A/HRC/7/20).

### Recommendations (A/HRC/7/20, paras. 81-83)

81. Given that the human rights situation in the Democratic People's Republic of Korea remains grave on several fronts, it is essential to press for concrete actions to address the various challenges set out in this report in an expeditious and effective manner.

82. For the future, the country in question should take the following measures:

- Ensure a more equitable development process in the country; implement human rights effectively and comprehensively, bearing in mind that it is party to a number of human rights treaties; and transfer resources from the militarization process to the social development sector;
- Overcome the disparities in access to food and other basic necessities, and build food security through sustainable agricultural development with broad-based people's participation;
- Guarantee the security of the human person by liberalizing the national system, modernize its administration of the justice and prison system, help solve the issue of abductions/disappearances by showing tangible and credible results, and abide by the rule of law, such as safeguards for accused persons, fair trial and the building of an independent judiciary;
- Adopt a clear policy not to punish those who leave the country without permission, desist from punishing returnees, and amend the law and train its officials accordingly;
- Address the root causes leading to refugee outflows and criminalize those who exploit them in the process of human smuggling, trafficking and extortion, while not criminalizing the victims, and accede to international treaties on the issue;
- Become a party to the Conventions of the International Labour Organization and implement them effectively;
- Protect the rights of women, children and other groups, particularly by overcoming the inequalities and the ensuing discrimination facing them;
- Address the violence and violations which have given rise to impunity and ensure that those who should be accountable are brought to justice;
- Invite the Special Rapporteur to visit the country to assess the human rights situation on the ground and to advise on needed improvements;
- Request technical assistance from OHCHR to help promote and protect human rights in the country, and engage sustainably and transparently with the monitoring committees of the treaties to which the country is a party.

83. The international community is invited to take the following measures:

- Emphasize more strongly the need for participatory and sustainable development in the country and highlight strategies for food security, while continuing to provide humanitarian aid on the basis that the aid must reach the target groups ("No access, No aid"), coupled with effective monitoring;
- Respect the rights of refugees, particularly the principle of non-refoulement, abide by the human rights of migrants, and mitigate the severity of national immigration laws which might otherwise lead to the detention of refugees and of those seeking refuge;



- Maximize dialogues with the Democratic People’s Republic of Korea to promote dispute resolution, and enlarge the space for human rights discourse and action, with relevant packages of incentives and graduated pressures, possibly linked with security guarantees, as appropriate;
- Ensure a calibrated approach within the United Nations so as to have leverage to influence the Democratic People’s Republic of Korea to respect human rights;
- Address the impunity factor through a variety of entry points substantively, whether in terms of State responsibility and/or individual criminal responsibility.

## Democratic Republic of the Congo

### Introduction

During the period under review, the Independent Expert on human rights in the Democratic Republic of the Congo, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the independence of judges and lawyers and the Representative of the Secretary General on the human rights of internally displaced persons visited the Democratic Republic of the Congo (DRC).

The Independent Expert on human rights in the Democratic Republic of the Congo visited the country from 27 November to 6 December 2007 (please refer to document A/HRC/7/25).

### Recommendations (A/HRC/7/25, paras. 64-69)

64. Quant à la consolidation de la paix nationale, l'expert indépendant formule les recommandations suivantes à tous les acteurs de la vie politique et nationale en République démocratique du Congo:

- a) De respecter l'Acte d'engagement signé à Goma suite à la conférence sur la paix, la sécurité et le développement dans les provinces du Nord et du Sud-Kivu;
- b) De prendre des mesures justes et transparentes visant à affirmer et à consolider l'autorité de l'État sur toute l'étendue du territoire et des mesures visant au rapprochement des acteurs politiques;
- c) De continuer à sensibiliser la population à une culture de paix, de tolérance, de réconciliation, de pardon, de fraternité, de cohabitation pacifique, d'intégration et d'unité nationale;
- d) De prendre conscience de la nécessité, pour tous les acteurs politiques et les médias, de cultiver la culture du dialogue, le refus de la violence et de la haine ethnique; l'acceptation de la démocratie, le verdict des urnes et les recours éventuels par les voies légales.

65. Quant à l'administration de la justice et la lutte contre l'impunité, l'expert indépendant réitère les recommandations suivantes au Gouvernement:

- a) Mettre en place une réelle politique répressive en vue de poursuivre en justice et sanctionner systématiquement tous les auteurs de violations des droits de l'homme, ainsi que les acteurs politiques et militaires qui se rendent coupables d'ingérence et d'obstruction dans l'administration de la justice;
- b) Mener à bien de manière exemplaire et dans de brefs délais les dossiers judiciaires et procès en première instance et en appel en cours dans le respect des normes internationales en matière de procès équitable;
- c) Apporter son soutien à l'équipe du Haut-Commissariat des Nations Unies aux droits de l'homme chargée d'établir la cartographie (*mapping*) des violations graves des droits de l'homme commises entre 1993 et 2003;
- d) Mettre en place une procédure d'assainissement (*vetting*) des forces de sécurité qui garantisse que les officiers haut gradés accusés d'avoir commis des violations graves des droits de l'homme soient immédiatement suspendus de leurs fonctions et remplacés;
- e) Mettre un terme à la pratique des juridictions militaires consistant à exercer leur compétence sur des civils et modifier le droit pénal militaire pour le mettre en conformité avec la Constitution et les normes internationales applicables en la matière;

f) Respecter effectivement et en toutes circonstances l'indépendance du pouvoir judiciaire, notamment en se gardant de modifier la Constitution d'une manière tendant à la confusion des pouvoirs entre l'exécutif et le judiciaire;

g) Augmenter substantiellement la part du budget de l'État réservé au secteur de la justice;

h) Prendre toutes les mesures appropriées pour garantir effectivement la protection des victimes, témoins, défenseurs des droits de l'homme et des membres des médias dont le rôle est essentiel dans la lutte contre l'impunité;

i) Mettre en place un groupe thématique d'experts chargé de fixer un échéancier adapté pour le remboursement des créances dues, et élaborer des solutions créatives – symboliques, collectives ou de faible coût – pour réparer les victimes (exonération des frais d'inscription scolaire, appui au lancement d'activités génératrices de revenu, etc.);

j) Accélérer l'adoption des lois essentielles pour l'administration de la justice, notamment les lois organiques sur les trois nouvelles hautes juridictions, la loi de mise en œuvre du Statut de Rome et la loi portant création d'une Commission nationale des droits de l'homme.

66. Quant aux violences sexuelles, l'expert indépendant réitère les recommandations suivantes au gouvernement:

a) Rappeler et préciser auprès de l'ensemble du personnel judiciaire, sous la forme par exemple d'une circulaire, les dispositions des lois de 2006;

b) Faciliter l'administration de la preuve en matière de violences sexuelles, en soutenant l'adoption et la diffusion d'un certificat médico-légal standard susceptible de constituer une preuve suffisante lors des procès;

c) Assurer la féminisation et la spécialisation du personnel judiciaire, à travers la formation d'équipes spécialisées désignées à chaque étage de la pyramide judiciaire, de la police aux cours et tribunaux;

d) Renforcer l'accès à la justice des victimes, en dispensant les victimes de violences sexuelles et, à terme, toutes les victimes d'infractions graves causées par des agents de l'État, du paiement des frais de justice;

e) Assumer la responsabilité des violences sexuelles commises par les agents publics, en garantissant à titre prioritaire la réparation des victimes constituées parties civiles dans des procès clefs tels que celui de Songo Mboyo, et en prévoyant dans la prochaine loi de finances l'inscription de fonds conséquents pour l'indemnisation des victimes;

f) Promouvoir, à l'échelle nationale et en collaboration avec le Parlement, la signature des Actes d'engagement tels que ceux signés au Sud-Kivu et au Kasaï oriental, démontrant la détermination à lutter contre l'impunité à l'égard des auteurs de violences sexuelles;

g) Étudier la possibilité de désigner des magistrats instructeurs spécialisés pour traiter des cas de violences sexuelles dans chaque parquet de la République démocratique du Congo.

67. Quant aux mesures visant à améliorer les conditions de détention et à mieux respecter les règles minima sur le traitement des détenus, l'expert indépendant réitère les recommandations suivantes au Gouvernement:

a) Prendre des mesures urgentes pour construire et/ou réhabiliter les prisons et autres lieux de détention, y renforcer la sécurité et améliorer les conditions de détention;

b) Prendre d'urgence les mesures nécessaires afin de remédier à la malnutrition dans les prisons, ce qui implique prioritairement l'allocation et la gestion adéquate des fonds prévus pour la nourriture des prisonniers aux établissements pénitentiaires;

c) Remettre sur pied dans les prisons des activités d'élevage, de production agricole et maraîchère visant à augmenter l'autosuffisance alimentaire, notamment par la mise en place de projets à caractère durable (fermes pénitentiaires);

d) Diminuer la surpopulation des prisons – et donc le nombre de détenus à nourrir – par diverses mesures comme la diminution de la mise en détention préventive, et de sa durée, et le recours intensif à la procédure de libération conditionnelle;

e) Construire ou réhabiliter, après un audit de l'état des infrastructures et une évaluation des besoins, certaines prisons centrales et de district;

f) Réhabiliter au moins deux prisons militaires afin de permettre de diminuer la surpopulation de nombreuses prisons et de séparer détenus civils et militaires.

68. Au Parlement, l'expert indépendant recommande:

a) Le vote des lois essentielles tant pour l'administration de la justice que pour les autres secteurs de la vie nationale, notamment

i) La loi de mise en œuvre du Statut de Rome de la Cour pénale internationale;

ii) La loi organique portant organisation et fonctionnement de la nouvelle institution nationale des droits de l'homme;

iii) La loi organique fixant l'organisation et le fonctionnement de la police nationale;

iv) La loi portant pénalisation de la torture;

v) La loi portant réforme de l'administration pénitentiaire;

vi) La loi portant intégration de l'armée et réforme des services de sécurité;

b) De promouvoir, à l'échelle nationale et en collaboration avec le Gouvernement, la signature des Actes d'engagement tels que ceux signés au Sud-Kivu et au Kasai oriental, démontrant la détermination à lutter contre l'impunité à l'égard des auteurs de violences sexuelles.

69. L'expert indépendant recommande à la communauté internationale:

a) De continuer d'apporter son soutien aux institutions de la République démocratique du Congo pour permettre l'instauration de l'état de droit, d'une culture de la paix et d'une démocratie durable;

b) De continuer d'apporter un appui à la restructuration, à l'intégration, au recrutement, à la formation, à l'équipement de l'armée, des services de sécurité et de la police;

c) De continuer de soutenir les efforts de redressement économique du pays, notamment le programme économique du Gouvernement en vue de l'aboutissement du point d'achèvement du programme de l'Initiative en faveur des pays pauvres très endettés (PPTE), l'assainissement du secteur minier, et l'apport des capitaux nécessaires aux secteurs sociaux dont l'éducation et la santé;

- d) De continuer à soutenir la présence intégrée du Bureau des Nations Unies pour les droits de l'homme (BNUDH) en République démocratique du Congo, constituée du Bureau du Haut-Commissariat des Nations Unies aux droits de l'homme (HCDH) et de la Division des droits de l'homme (DDH) de la MONUC dans l'exécution de ses programmes et activités de promotion et de protection des droits de l'homme;
- e) De soutenir les efforts de la MONUC pour apporter un encadrement et un appui plus substantiels au Gouvernement, à l'armée et à la police, à la mesure des différents défis à relever concernant les crimes et troubles dans le pays et à ses frontières est;
- f) De fournir à l'expert indépendant, toute l'assistance nécessaire, afin qu'il puisse s'acquitter de son mandat complexe compte tenu de l'immensité du pays et des nombreux domaines relatifs aux droits de l'homme que couvre son mandat;
- g) De soutenir l'établissement d'un tribunal pénal international pour la République démocratique du Congo ou à défaut, des chambres criminelles mixtes au sein des juridictions congolaises déjà existantes pour connaître des crimes commis avant le 1<sup>er</sup> juillet 2002 et/ou tous autres crimes avérés.

A/HRC/7/6/Add.4

The Special Rapporteur on violence against women, its causes and consequences visited from the Democratic Republic of the Congo from 16 to 28 July 2007 (please refer to document A/HRC/7/6/Add.4).

**Conclusions and recommendations** (A/HRC/7/6/Add.4, paras. 102-111)

102. Sexual violence has been a defining feature of the Democratic Republic of the Congo's armed conflicts. Women living in areas of conflict still suffer extreme levels of violence, committed by FARDC, PNC, armed groups and increasingly also civilians.

103. The situation is particularly dramatic in South Kivu, where non-State armed groups, including foreign militia, commit sexual atrocities that are of an unimaginable brutality and aim at the complete physical and psychological destruction of women with implications for the entire society. Given the multitude of actors involved in the conflict and the continuation of these crimes, the international community, in cooperation with the Congolese authorities, has a responsibility to take all necessary measures to ensure that women in South Kivu are protected. Without strong international backing, the Congolese authorities will not be able to resolve this major human rights crisis which is, after all, rooted in the international community's failure to effectively react to, let alone prevent, the Rwandan genocide.

104. While war has ended in many other parts of the country, women are not at peace. Sexual violence remains rampant throughout the country. In Equateur Province, PNC and FARDC have carried out systematic reprisals against the civilians, including mass rape. Soldiers and police who commit these acts amounting to crimes against humanity and war crimes are rarely held to account by the commanding officers. Many of the perpetrators have been given commanding positions in the State security forces, which further aggravates the situation.

105. Impunity for rape is massive, especially if the perpetrator belongs to the State security forces. Due to political interference and widespread corruption, a perpetrator with a minimum of influence or affluence goes unpunished. It is questionable whether there is political will to end this impunity, given that the justice system is denied the budget and support to effectively deal with its caseload.

106. The scale and the brutality of sexual violence in the Democratic Republic of the Congo seem to have eroded all protective social mechanisms, unleashing brutal fantasies carried out on women's bodies. Civilians are increasingly among the perpetrators of rape, which indicates a normalization of the war-related violence. This intensifies existing inequalities and oppression of women in society. If the sexual violence associated with war is addressed in isolation, gender-based discrimination and violence endured by women in "peace" will be grossly neglected and the war on women reinforced.

107. Women survivors of rape have suffered severe physical and psychological injuries, but lack sufficient care. Survivors are often socially stigmatized and many are so destitute that they have to struggle for their mere survival. Women are also systematically denied the compensation to which they are entitled under international and Congolese law.

108. In view of my findings, I would like to make the following recommendations to the Congolese State institutions:

(a) End impunity, in particular with regard to members of the security forces:

- Demonstrate a zero-tolerance policy on sexual violence and other gross human rights violations; publicly condemn all acts of rape committed by security forces.
- Issue, disseminate and enforce orders to the FARDC, FARDC Naval Forces, PNC, ANR, Police Special Services (Kin Mazière) and Republican Guard prohibiting rape and other forms of sexual violence, which may amount to war crimes and crimes against humanity. Investigate suspects, including bearers of command responsibility, prosecute and severely sanction any member of the security forces who committed, ordered or condoned rape or other human rights violations. Prosecute and punish officers bearing command responsibility for grave violations.
- Disseminate, raise awareness and implement the Law on Sexual Violence of 20 July 2006. Train judges, prosecutors, law enforcement officials and all the security forces on the law.

(b) Enhance the independence and capacity of the justice system:

- Instruct authorities at all levels, including commanding officers of all security forces, to fully cooperate with judicial investigations and desist from interfering in the administration of justice. Instruct commanding officers to surrender alleged perpetrators immediately to the justice system, even in zones of military operations. Fully cooperate with any investigation carried out by the International Criminal Court.
- Increase the budget designated for the functioning of justice to at least 2 per cent of the national budget. Deploy more justice personnel, including high-ranking military judges and prosecutors, to the provinces.
- Develop, in cooperation with the United Nations and civil society, a standardized national medical certificate to be used in judicial processes.
- Sanction any person who usurps judicial functions by encouraging or forcing victims of sexual violence to accept out-of-court settlements.
- Reform the penitentiary system. Address the security gaps and the inhumane conditions in prisons. Diligently investigate all escapes and take disciplinary and penal measures against officials, including commanding officers, who are implicated in such escapes.
- Adopt a law to establish the Supreme Council of the Judiciary, with the composition and functions as foreseen by article 152 of the Constitution.
- Amend existing legislation to ensure that civilian courts have jurisdiction over all crimes against humanity, regardless of the perpetrator's function.
- Adopt a law on the implementation of the Statute of the International Criminal Court, which will transfer the jurisdiction to hear international crimes from the military to the civilian courts.

(c) Reform the security sector:

- Implement a systematic vetting process for all branches of the security forces to ensure that officers accused of having committed human rights violations are discharged and prosecuted accordingly.
- Suspend and prosecute, including in military operation zones, any member of the security forces suspected of committing rape or other gross human rights violations as well as any officer interfering in the administration of justice.
- Instruct authorities at all levels to support and collaborate with the United Nations team designated to map human rights violations committed between 1993 and 2003.

(d) Compensate, support and protect women survivors of violence:

- Compensate all victims of sexual violence committed by State agents, beginning with those cases where courts have already ordered the payment of compensation. Allocate adequate funds for that purpose in the national budget.
- Ensure that all women survivors of sexual violence have access to medical and psychosocial care. Support and participate in existing Provincial Synergies to combat sexual violence. Initiate the creation of similar action committees, involving Government representatives, civil society and the United Nations in all provinces of the country.
- Deploy security forces to protect civilian populations at risk of attacks, with regular patrols in these areas. Resume, with the full support of MONUC, military operations against the FDLR/Rasta armed group in South Kivu.
- Involve the local population in setting up protection mechanisms.

(e) End discrimination and all forms of violence against women:

- Elaborate jointly with the Presidency, concerned ministries, civil society and the United Nations, an action plan on women, peace and security, with clear objectives and benchmarks and a particular focus on sexual violence.
- Allocate adequate resources for its implementation.
- Adopt a gender parity law in line with article 14 of the Constitution. □ Abolish all legal provisions that discriminate against women, beginning with a comprehensive reform of the Family Code.
- Adopt a law on the establishment of a national human rights commission, with an adequate budget and in line with the Paris Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights, including women's rights.
- Denounce publicly and unequivocally all forms of violence against women, including spousal abuse, marital rape and sexual harassment without invoking any custom, tradition or religious consideration to justify or excuse such violence. Investigate and prosecute with due diligence all cases of violence against women in the family or community.

109. I would like to recommend to the International Criminal Court that it:

- Investigate war crimes or crimes against humanity - including sexual violence committed after 1 July 2002 - that the Congolese authorities are genuinely unable or unwilling to investigate or prosecute. Prosecute high-ranking officers of FARDC and PNC and leaders of armed groups that have committed such crimes and award compensation to victims.
- Take appropriate measures to protect witnesses and victims collaborating with the Court.

110. I recommend to the United Nations and particularly to MONUC troop-contributing countries that they:

- Fully support the Congolese security forces in all military operations that would genuinely improve the protection of the civilian population.
- Include vetting mechanisms in the Disarmament, Repatriation, Reinstallation, and Reintegration Programme to prevent impunity for foreign perpetrators of gross human rights violations.

- Provide OIOS and the Conduct and Discipline Team with the capacity to investigate all allegations of sexual exploitation and misconduct of peacekeeping forces, collect forensic evidence that can be used in a court of law. Where allegations are found to be substantiated, ensure that the victim receives compensation from MONUC or the relevant troop-contributing country.
- Adopt and fund a comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff or related personnel.
- Amend existing norms of conduct: failure to support children fathered in areas of deployment should be considered misconduct that is harmful to the interests of the organization.
- Establish cooperation between the United Nations Trust Fund in Support of Actions to Eliminate Violence against Women (managed by UNIFEM) and my mandate to ensure, among other things, that the Trust Fund's funding for the Democratic Republic of the Congo is in line with recommendations contained in this report.

111. Finally, I recommend that the international community:

- Launch a comprehensive international initiative to improve peace and security of women and the civilian population in the Kivus, focusing particularly on the role of foreign armed groups.
- Monitor the situation of sexual violence in the Democratic Republic of the Congo and initiate dialogue about the situation with the Government at all appropriate international forums, including the Human Rights Council.
- Maintain a strong military and civilian peacekeeping presence in the Democratic Republic of the Congo until a minimum of security for the civilian population, rule of law and democratic/civilian control over the security has been established.
- Support provincial synergies to combat violence against women in all provinces of the country. Provide participating civil society organizations with funds to deliver legal, medical, psychological, social and economic assistance to survivors of sexual violence.
- Provide direct funding for local women's initiatives to support women's empowerment and livelihood sustenance.
- Ensure that funds made available to the Government are sufficiently channeled for reparation and care of survivors of violence.
- Amend penal laws and exercise extraterritorial jurisdiction over acts of sexual exploitation and abuse perpetrated by nationals.
- End indifference with respect to sexual violence in the Democratic Republic of the Congo.

A/HRC/8/4/Add.2

The Special Rapporteur on the independence of judges and lawyers visited the Democratic Republic of the Congo from 15 to 21 April 2007 (please refer to document

Conclusions (A/HRC/8/4/Add.2, par. 69-73).

69. In view of the above findings, the Special Rapporteur can only conclude that the judicial system in the Democratic Republic of the Congo is in a deplorable state today. Over and above the damage caused by the war, it has to be recognized that the main reason for this situation is the State's failure to give the judicial authority the necessary resources for it to function. In the present circumstances, the judiciary cannot function independently, as it is subject to political interference and corruption, partly because of the lack of adequate salaries and an independent Higher Council of the Judicature to protect judges from such interference, provide them with the necessary resources and supervise their conduct. It is also prevented from functioning efficiently by the lack of the most basic financial and material resources, owing to the exceedingly small budget assigned to it.



70. As a result of this inadequate financing of the judiciary, investigations cannot be carried out; very few trials are held, and meanwhile large numbers of persons spend months or even years in preventive detention without seeing a judge; the few court decisions finally handed down are hardly ever enforced; and in the rare cases when they are, a large percentage of convicts escape owing to the dilapidated state of the prisons and the lack of prison staff. Thus, impunity prevails, and it is only in exceptional cases that justice is done in an independent manner, including in cases involving the most serious human rights violations, such as rape, summary execution, torture and arbitrary detention.

71. The Special Rapporteur also points out that, according to statistics from the MONUC Human Rights Division, 86 per cent of these serious violations are committed by State officials - namely police officers and members of the armed forces - and fall within the jurisdiction of the military tribunals. This constitutes a violation of the relevant international standards, which require that cases of serious human rights violations by military personnel be tried by the ordinary courts, and not the military jurisdiction, which does not provide the necessary guarantees, particularly with regard to independence and competence.

72. Lastly, the Special Rapporteur notes that gaining access to justice is very difficult for the majority of the population because of corruption, a lack of financial resources, the geographical remoteness of the courts and transport problems, as well as ignorance of legal remedies.

73. Although the Democratic Republic of the Congo cannot function as a democratic State without a strong and independent judiciary, the judicial system remains the poor relation of the country's democratic institutions. To remedy this situation, the Special Rapporteur makes the following recommendations.

Recommendations (A/HRC/8/4/Add.2, par. 74- 90).

74. Given that the constitutional provisions adopted by referendum in 2006 on the independence of the judiciary have yet to be implemented nearly two years later, the following laws must be adopted as a matter of urgency:

(a) A law on the organization of the Higher Council of the Judicature. The adoption of this law is extremely urgent, since this body, which will be responsible for appointing, promoting and disciplining judges, is necessary to guarantee their independence while at the same time providing adequate supervision of their conduct. It will also draw up the judicial system's budget, which is crucial to its independence and effectiveness;

(b) A law providing for the application of the Rome Statute, which will, inter alia, transfer jurisdiction over international crimes from military tribunals to the civilian judicial system;

(c) Laws establishing the Court of Cassation, the Constitutional Court and the Council of State.

75. As regards the composition of the Higher Council of the Judicature, it is essential that this body be independent of the other branches of the State, as its mandate is to guarantee the independence of the judicature from the other branches of power. It is therefore crucial to maintain the composition of the Council as set forth in article 152 of the Constitution, i.e. comprising only judges. The proposal for a constitutional amendment put forward by a group of members of parliament, according to which the members of the Council would include the President of the Republic and the Minister of Justice, is contrary to the other provisions and to the very spirit of the Constitution, which is founded on the separation of powers. The proposed amendment should therefore be rejected.

76. The development of a strong, effective and independent judicial system should be a priority of the Government and of international bodies active in the field of justice and human rights. Without urgent and substantial reinforcement of the judicial system in the Democratic Republic of the Congo, the rule of law and the consolidation of the democratic reforms in which the Congolese people and the international community have invested so much over recent years will not materialize. Meeting this objective will require, in particular:

(a) The allocation of a considerably higher percentage of the national budget to the judicial system, bearing in mind that the budget of the judicial system usually accounts for between 2 and 6 per cent of national budgets. These resources should make it possible to:

Recruit new judges. Over 6,000 applications have been submitted to the Ministry of Justice. A substantial number of additional judges should be recruited as soon as possible;

Give judges decent premises that are more secure, more spacious and not merely provisional, as well as the resources to maintain them;

Give judges the operational capacity (transport, information technology, etc.) they need to perform their duties efficiently and independently, without having to rely on other State bodies or international organizations;

Provide judges with the necessary resources to cover the operational costs of the judiciary, so that they do not need to ask for a financial contribution from victims to carry out their investigations;

Improve judges' pay: the experience in Ituri, where judges received allowances from the European Union for several months, shows that they can function more efficiently under these conditions, are less likely to give in to corruption or interference, and have a greater sense of recognition and motivation;

Establish new courts, especially magistrates' courts;

Set up a fund for each bar association to provide financial compensation to lawyers assigned by the courts to defend indigents.

(b) The development and implementation by the Justice Ministry, in close cooperation with donors, of a plan for rebuilding the judicial system. In this regard, the Special Rapporteur considers that the Joint Committee to Monitor the Justice Framework Programme in the Democratic Republic of the Congo is the key mechanism for reforming the judicial system. Accordingly, he encourages the Committee members to press on with their work so that the plan can be adopted and implemented in the very near future. Specific measures to rebuild and support the judicial system should begin as soon as possible, given the extremely weak state of the judiciary and the destabilizing effect this weakness has on the democratic balance in the country;

(c) Recovery by the country's authorities of control over its natural resources. The Democratic Republic of the Congo is an extremely rich country, but thus far, exploitation of its natural resources has not benefited its population. On the contrary, unplanned or illegal exploitation continues to be a significant source of conflict and human rights violations, leading to looting and other abuses. Despite this, no one has been held to account for this illicit exploitation. It would be helpful to train specialist judges in this field. Regaining control of natural resources would allow the country to obtain the resources it needs to strengthen its institutions, in particular the judicial system, and to ensure that the population benefits from the country's wealth.

77. Civilians should no longer be tried by military courts. The Military Judicial Code should be amended to limit the jurisdiction of military courts to purely military offences, such as infringements of military regulations such as breach of rules, etc., committed only by military personnel. Accordingly, the civilian courts should be substantially strengthened, as having sole jurisdiction to try civilians and cases of human rights violations committed by the armed forces or the police.

78. Given that the vast majority of human rights violations are committed by the armed forces and the police, reforms of these bodies should be stepped up and military personnel and police officers should be trained to be disciplined and respect the law. This will also help relieve congestion of the courts, which are burdened by an excessive caseload.

79. The training of judges, especially in ethics, professional conduct and international human rights standards, and the training of court officers should be considerably strengthened. There is no body offering initial training to judges after university and to court officers before they assume office. A college for judges and a college for the professional training of court officers should be established as soon as possible.

80. Acts of sexual violence, the vast majority of which are committed against women, have reached inconceivable proportions in the Democratic Republic of the Congo. This is a scourge devastating Congolese

society. In order to combat impunity of the perpetrators, which is not only a danger and an injustice but also an incitement to further crimes, judges should receive regular training on the law on sexual violence. They should be made aware of the need to apply the law to render justice to the victims and prevent further acts of violence. The Special Rapporteur welcomes the visit to the Democratic Republic of the Congo in July 2007 of the Special Rapporteur on violence against women, its causes and consequences, and invites the Government and the judicial and legislative authorities of the country to follow her recommendations in this regard (see A/HRC/7/6/Add.4, paras. 102 to 111) in order to remedy this extremely grave situation as soon as possible.

81. Less than 10 per cent of judges are women. More women judges should be recruited to correct this glaring imbalance. Recruitment of women judges is also important to facilitate the prosecution and conviction of perpetrators of sexual violence and other violations committed against women.

82. Urgent measures should be taken to guarantee the safety of judges, especially that of military judges from military officers and the military command. Military personnel who assault judges should be subjected to urgent criminal proceedings and immediate exemplary suspension.

83. A system for monitoring the enforcement of judgments should be established, as should a mechanism for State coverage of enforcement fees for indigents and victims of sexual violence.

84. A special “public liability” system should be put in place to establish rules governing compensation for damages caused by acts committed by public officials.

85. Given that the use of mobile courts has been very effective in increasing access to justice for residents of rural areas, in particular in Ituri in 2006, but that they were mainly organized by NGOs, the State should immediately include these initiatives when planning the activities and preparing the budget for the judiciary.

86. The use of preventive detention should be strictly limited. This will also prevent prison overcrowding. A maximum period of preventive detention should be established by law, especially for offences for which the prison sentence is under five years.

87. The Act on the bar association should be amended to provide that lawyers may only be summoned by courts of appeal. The gradual elimination of the profession of judicial defender should be envisaged.

88. In order to provide a solid foundation for democracy, the Congolese judiciary and the international community should cooperate in prosecuting grave violations of human rights and humanitarian law committed during the war, drawing on the experience of judicial cooperation in the area of transitional justice that has produced good results in other countries. The establishment of joint benches comprising national and international judges sitting in national courts might be an appropriate solution.

89. As the National Human Rights Monitoring Centre, a transitional body, has ceased to exist, a new national human rights commission should be established, in accordance with the Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights (General Assembly resolution 48/134, annex).

90. The international community should continue to provide support through MONUC and to strengthen cooperation programs so that the country can embark on the necessary institutional reforms.

The Representative of the Secretary General on the human rights of internally displaced persons visited the Democratic Republic of the Congo from 21 January to 3 February 2008 (please refer to document A/HRC/8/6/Add.3).

Conclusions and recommendations (A/HRC/8/6/Add.3, par. 71-75).

71. Following this first mission in the Democratic Republic of the Congo, the Representative concludes that this country is experiencing a serious protection crisis and a serious humanitarian crisis, particularly in its eastern region, highlighted inter alia by the very large numbers of internally displaced persons. He considers that the adoption of peaceful solutions to the present conflicts, the renunciation of violence, scrupulous respect by all concerned for human rights and the guarantees set out in humanitarian law and an unfailing commitment to combat impunity are essential in order to put an end to the serious violations of human rights suffered by the displaced persons in the eastern part of the Democratic Republic of the Congo.

72. The Representative calls on all the parties to implement without delay and with unfailing political commitment the statements of commitment signed at the Conference for Peace, Stability and Development in North and South Kivu, held in Goma from 6 to 23 January 2008, as well as the November 2007 Nairobi communiqué. In particular, he considers that continued dialogue is the only way out of the conflict affecting the country, and that any resort to arms would lead to disastrous consequences for the civilian population, especially the hundreds of thousands of persons who have already been displaced or who would be forced to flee as a result of such operations.

73. In order to provide displaced persons in the Democratic Republic of the Congo with assistance and protection in the context of a durable solution to the issue of displacement in this country - a prerequisite for peace building - the Representative recommends a strategy focusing simultaneously on continued political dialogue between the Government and the various armed groups and the other parties concerned and the strengthening of humanitarian assistance and activities for the protection of the displaced population, as well as early recovery measures where returns are already under way or can be contemplated.

74. The Representative points out that, in keeping with the Guiding Principles, the State has primary responsibility for protecting its citizens, and that it is incumbent upon it to take all measures to ensure the protection of the civilian population. He also draws attention to the role and responsibility of the international community in supporting the Government in its efforts.

75. In particular, he makes the following recommendations:

(a) Addressed to the Government:

The Representative emphasizes the need to respect the fundamental distinction between combatants and civilians when planning and carrying out security operations, and to refrain from any act prohibited by international humanitarian law and international human rights law. In this context, he encourages the authorities to launch without delay a systematic program, supported by MONUC, to promote training and awareness in international humanitarian law and human rights for members of the security forces, especially the rights of displaced persons as contained in the Guiding Principles on Internal Displacement.

Given the many violations of human rights of which certain members of the armed forces are accused, particularly where violence against women is concerned, the Representative recommends more vigorous efforts to combat impunity, by means of investigations and by bringing the main perpetrators of such violations to justice and guaranteeing the right of victims to justice and reparation.

The Representative recommends that the Government, with substantial support from MONUC, should engage in the following activities:

Reconciliation, in particular between ethnic communities

Transitional justice and efforts to combat impunity

Settlement of land-related disputes

The Representative calls on the Government to take the necessary steps so that all displaced persons can participate in the local elections scheduled for this year, in particular by ensuring the replacement of voters' cards lost during displacement, the transport of displaced persons to their original localities, the organization of voting in the place of displacement or any other step in keeping with international standards which will enable the displaced persons to exercise their right to vote.

The Representative recommends that, in keeping with the Protocol on Protection and Assistance to Internally Displaced Persons adopted at the International Conference on the Great Lakes Region, the Guiding Principles on Internal Displacement should be incorporated into their legal systems and that, with support from MONUC and the organizations concerned, a legislative framework, a strategy and a plan of action for the implementation of the obligations stemming from those Principles should be drawn up.

(b) Addressed to the armed groups:

The Representative points out that the armed groups have an obligation to respect international humanitarian law, in particular the fundamental distinction between combatants and civilians, and should refrain from any act prohibited by international humanitarian law, such as making use of the civilian population as a base for their actions, recruiting children into their ranks and exposing the civilian population to the risk of reprisals.

The Representative calls for the disarming and immediate rehabilitation of child soldiers.

(c) Addressed to the international community and donors:

The Representative encourages the international community to continue to provide substantial and sustained support to assistance and protection programs for displaced persons in the Democratic Republic of the Congo. He encourages the humanitarian organizations to broaden the support provided to host communities which are overwhelmed by the presence of displaced persons.

The Representative recommends proactive engagement in activities for economic reintegration, relaunching of basic services and development in regions of return. In this context, he emphasizes the importance of sustainability of returns and its economic and developmental aspects as a key contribution to reconciliation and peace building.

The Representative also encourages efforts to boost the activities of the humanitarian agencies in the field, in particular by using all means to strengthen the humanitarian presence and gain access to the displaced groups which are located furthest from the centers, many of whom are highly marginalized and have been unable to benefit from humanitarian aid.

The Representative recommends that, as far as possible, humanitarian aid should be better adapted to the needs of the displaced populations, in particular by taking into account the specific food requirements of young children. Where non-food items are concerned, an additional effort should be made, in particular by supplying tools and seeds so as to enable the displaced persons to continue farming, and by developing other activities related to early recovery.

The Representative recommends cooperation with the Government to train and heighten the awareness of the security forces, in particular as concerns international humanitarian law, human rights and the Guiding Principles on Internal Displacement. At the same time, he encourages MONUC to launch a systematic program to train and foster awareness among its military contingents concerning international humanitarian law and human rights, in particular the rights of displaced persons as contained in the Guiding Principles on Internal Displacement.

The Representative recommends that the working group on protection should continue to support the protection-related activities of the military wing of MONUC and cooperate with it, but at the same time to uphold the distinction between humanitarian action and military action and not limit its protection activities to such coordination, but strive to better operationalize the protection of displaced persons and returnees in non-military fields.

## Dominican Republic

### Introduction

During the period under review, the Special Rapporteur on racism and the Independent Expert on minority issues visited the Dominican Republic from 23 to 29 October 2007 (please refer to document A/HRC/7/19/Add.5 - A/HRC/7/23/Add.3).

20. The Special Rapporteur and the independent expert submit a number of joint recommendations on issues relating to political and legal, intellectual, cultural and ethical strategies to be implemented to tackle the existence of racism and racial discrimination and protect and promote the rights of minorities in the Dominican Republic.

### Recommendations on racism and racial discrimination (A/HRC/7/19/Add.5, paras. 21-30)

21. The experts call upon the Government to officially recognize and publicly acknowledge the existence and the historical and cultural depth of racism and racial discrimination in Dominican society, and express, in the strongest and most determined terms, its political will to combat it. Political and legal strategies are required to fully address the manifestations and expressions of racism and racial discrimination.

22. The Government should recognize the Amerindian, Hispanic and African roots of the multicultural identity of the Dominican Republic and accordingly explicitly inscribe this multicultural identity in the Constitution.

23. The experts call on the Government to initiate a wide and inclusive debate on issues of racism and discrimination within the country, particularly in regard to affected groups, to rebuild confidence across and within communities that there is not a policy of discrimination and exclusion targeted at them.

24. At the institutional level, the Government should establish a consultative body including representatives of State institutions, democratic political parties, non-governmental organizations, community representatives, intellectuals and academics, and trade union and employers' organizations to assess the situation of racism and racial discrimination in the Dominican Republic. This body should formulate a national plan of action against racism, racial discrimination and xenophobia inspired by the Durban Declaration and Programme of Action and aimed at uprooting the scourges of silence and invisibility of the victims and promoting their representation and participation at all levels of society.

25. An independent national institution for the promotion and protection of human rights should be established and empowered, in accordance with the Paris Principles, with the independent authority to work to combat all forms of discrimination in a holistic manner, including on all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. The experts note Law No. 19-01 in this respect, establishing a human rights ombudsman's office (*Defensor del Pueblo*) and urge the implementation of this law in practice.

26. The Government should fulfil its obligations under anti-discrimination provisions of all international and regional human rights treaties to which it is a party including the International Convention on the Elimination of All Forms of Racial Discrimination and the American Convention on Human Rights. In this respect, and in conformity with international law, at the domestic level the Government should sponsor comprehensive legislation aimed at combating racism, racial discrimination and xenophobia, and protecting and promoting the rights of minorities. The Government should rigorously implement such legislation and undertake firm measures to prevent discriminatory practices.

27. The collection of data regarding the socio-economic status of the population disaggregated by racial or ethnic identities, national origin and gender lines is recommended as an essential tool to reveal the full extent of social problems experienced by persons including those belonging to different minority groups. Such data will assist in the development of appropriate and effective policies and practices to combat the effects of discrimination.

28. In parallel with a political and legal strategy, the Government should adopt an ethical and cultural strategy that tackles the deepest roots of racism and racial discrimination. Such a strategy should be built around the promotion of reciprocal knowledge of cultures and values, of interaction among the different communities, and of the link between the fight against racism and discrimination and the long-term construction of a democratic, egalitarian and interactive, multicultural society. The rich legacy and depth of multicultural interactions that have influenced Dominican society during its history must be a strategic point of entry in that regard.

29. Education must play a vital role in sensitizing the Dominican population to the historical legacy of colonization and slavery and the complex history that has characterized the relations between the Dominican Republic and Haiti. This is essential to eliminate the negative stigma and stereotypes constantly experienced by black persons – be they Dominicans, Dominicans of Haitian descent or Haitians. The Government is encouraged to revise school curricula and textbooks, including history books, to ensure the appropriate reflection of issues related to the human, cultural and social advantages of multiculturalism and the contributions of the different ethnic groups to the construction of the national identity of the Dominican Republic.

30. The media should initiate a broad and institutional process aimed at both assessing its role in the formation of perceptions, images and thus prejudices and promoting the important role of the media in the fight against racism and xenophobia and the promotion of tolerance and living together. The experts recommend that the media adopt a code of conduct and take steps to reflect the ethnic, cultural and spiritual diversity of the Dominican Republic in both their programmes and their organizational structure.

**Recommendations relating to documentation of civil status and citizenship** (A/HRC/7/23/Add.3, paras. 31-37)

31. In accordance with article 11 of the Dominican Constitution, the Government of the Dominican Republic should recognize the right of all persons born on Dominican territory, including the children of a Haitian parent, to Dominican citizenship without discrimination on the grounds of the nationality or status of the parents. Considering that it is the State's obligation to grant citizenship to those born on its territory, the Government must adopt all necessary positive measures to guarantee that Dominican-born children of Haitian heritage can access the late registration procedure in conditions of equality and non-discrimination and fully exercise and enjoy their right to Dominican nationality. The requirements to prove birth on Dominican territory should be reasonable and not represent an obstacle for acceding to the right of nationality.

32. The Government should act swiftly to bring its Migration Law No. 285-04 into conformity with article 11 of the Constitution and promulgate regulations that appropriately implement the law in a manner that protects the right to non-discrimination enjoyed by every person within Dominican territory and the imperative to avoid statelessness.

33. The status of all migrants who have been resident in the Dominican Republic should be regularized as soon as administratively possible. Those who have been in the country for an extended period, including Haitian migrants, and who have established family and community ties should be naturalized regardless of inability to prove prior lawful status. The Government should urgently establish a process of nationalization

for those who seek Dominican citizenship that is easily accessible, reasonable and affordable for people of limited means.

34. The Government should take effective measures to ensure that all future migrants are given documents at entry points and that employers are held responsible for complying with labour laws with respect to all employees and respecting the human rights of all employees in all situations. The Government should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and harmonize its national legislation accordingly.

35. The Government should put in place effective measures to stop discriminatory practices linked to granting citizenship and civil status registration, including birth certificates and *cédulas*, and to bring administrative procedures in this regard into conformity with due process requirements. In particular, oversight over local civil registry offices should be dramatically increased; Circular 017 of the Central Electoral Board should be withdrawn and replaced with one which encourages an official attitude of facilitation and trust; officials should be given notice that acts of racial discrimination in the exercise of official functions will be severely punished; any denial of request to issue documents should be in writing and contain a full explanation for the denial; all denials of documentation or orders for deportation should be subject to appeal to the courts of general jurisdiction.

36. The experts call upon the Government of the Dominican Republic to fully comply with the judgment and findings of the Inter-American Court of Human Rights in the case of *Yean and Bosico vs. the Dominican Republic*. In particular the Dominican Republic should implement both legislative and administrative measures to ensure non-discriminatory issuance of birth certificates and access to schools.

37. The Dominican Government has a duty to guarantee that private actors do not violate the human rights of persons within Dominican territory. The State has a responsibility to monitor private companies and employers involved in agriculture, construction and related industries, in which many Haitians and Dominicans of Haitian descent are employed.

### **Recommendations of a general nature**

38. The situation of multiple discrimination facing minority women, particularly those who are black or of Haitian heritage, presents specific challenges, including in the fields of education, employment and housing, which require targeted attention and dedicated resources within relevant ministries and local and regional authorities. The Government should take immediate steps to eliminate the gender bias in the Migration Law that denies Dominican women the ability to pass their nationality on to their children unless the father is Dominican. All women should have equal rights to work, including those whose status is dependent on their migrant husband.

39. The Government should fully implement the provisions of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

40. The experts urge the Government to fully conform with its obligations under the Convention on the Rights of the Child for all children, irrespective of nationality, race or ethnic origin. Particular attention in this regard should be paid to children in vulnerable circumstances including those living in the *bateyes* or plantations, or otherwise in conditions of poverty and disadvantage.

41. The experts recognize the human, cultural, economic and social complexities and tensions inherent in the historical legacy, the sharing of a border and the different levels of development and political stability between the Dominican Republic and Haiti. They also note the positive measures taken by the Dominican authorities in the area of humanitarian assistance including, for example, the provision of health-care facilities to Haitian



migrants. They believe that the promotion of the following principles may contribute not only to the solving of the actual problems but to the strengthening of the relations between the two countries and people: the centrality of their profound and lasting interdependence through geography, history and people; the historical truth based on a joint work of memory; shared political responsibility; reciprocal knowledge of values and cultures; human and cultural interactions between people; recognition and respect of cultural and ethnic diversity; and full adherence and respect of international and regional human rights instruments. The experts call upon the international community to fully support a process of mutually beneficial development.

42. Taking into account the requirement of mandate holders to identify possibilities for technical cooperation by the Office of the High Commissioner for Human Rights (OHCHR), the experts recommend the Government to support the establishment of an OHCHR presence within the United Nations Country Team in Santo Domingo.

## El Salvador

### Introduction

During the period under review, the Working Group on Enforced or Involuntary Disappearances visited El Salvador from 5 to 7 February 2007 (please refer to document A/HRC/7/2/Add.2).

### Conclusions and recommendations (A/HRC/7/2/Add.2, paras. 79-96)

79. The Working Group is grateful for the hospitality and cooperation extended by the Government during its visit. During their visit, the members of the Working Group were able to carry out their duties in full freedom, and they met senior officials of the Government of El Salvador, members of various civil society organizations and the families of the victims of enforced disappearances, with whom it held open and objective discussions. The Working Group considers it vital, in order to gain a balanced overview, to meet and gather information from both official sources and civil society, in particular with civil society organizations whose main aim is to search for the victims of enforced disappearance.

80. The main purpose of the mission was to gather information to serve as a basis for clarifying the greatest possible number of cases on the Working Group's registers. The Working Group expressed a wish to look into ways of strengthening channels for cooperation with official and non-governmental sources so that links can be maintained with the victims' families in order to clarify the greatest possible number of cases. The Working Group gave all those involved a list of the cases and informed them of the applicable criteria for considering the cases pending to be resolved (for example, the persons' address or location, if they have been found alive; their death certificate, if their death has been proved; or a death declaration, with the consent of the victim's family).

81. The Working Group acknowledges that, compared with its predecessors, the current Salvadoran Government has been making some institutional efforts to search for children who disappeared during the armed conflict and some isolated efforts to search for disappeared persons in general. However, following the mission, it reached the conclusion that El Salvador does not have an institutional system to search for persons who have disappeared that meets international standards for that kind of institution, such as the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles).

82. Nevertheless, it may be concluded that the efforts made by civil society, in spite of their scarce material resources and staff, are a cause for great hope, since their results in the search for disappeared persons have been considerable. This shows that, despite the difficulties, which are many and great, it is possible to find out the fate or whereabouts of the disappeared persons.

83. With regard to the right of victims and their families to the truth, justice and redress, the Working Group concludes that the 1993 Law on General Amnesty for the Consolidation of Peace clearly departs from the principles of the Declaration, in particular its article 18, as interpreted by the Working Group in one of its general comments.

84. The Working Group is concerned that there is no law in force in El Salvador that guarantees the right to information that might be useful for clarifying cases of enforced disappearance, and that some legal provisions are an obstacle to the effective exercise of the right to information.

85. It may be concluded that in general terms El Salvador has fulfilled its obligation to enshrine the offence of enforced disappearance as an independent offence in its criminal legislation, albeit with certain shortcomings, already noted in this report.

86. Accordingly, the Working Group highlights the permanent or continuous nature of the offence of enforced disappearance, such that it should be applied to enforced disappearances that began to be committed even before the relevant law entered into force, provided that does not interfere with the principle according to which criminal law may not be applied retroactively to the detriment of the person presumed responsible. Consequently, in a strictly rigorous application of international law, cases of enforced disappearances that have yet to be clarified continue to be committed since it is a continuous offence and not a matter of the past.

87. Subsequently, the Working Group submits the following recommendations to El Salvador, in the hope that they will be implemented as soon as possible and that their implementation will enable the pending cases of enforced disappearance to be resolved and future cases to be prevented.

88. While the Working Group recognizes the need to reform domestic legislation, the Working Group respectfully suggests that El Salvador should become a party to the Inter-American Convention of Enforced Disappearance of Persons and the Rome Statute of the International Criminal Court, which defines the international crime of enforced disappearance of persons as one embodying the characteristics of crime against humanity. It also recommends that El Salvador become a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which lays down that crimes against humanity are prosecutable irrespective of their date of commission. In particular, it recommends that El Salvador should become a party to the new International Convention for the Protection of All Persons of Enforced Disappearance.

89. The Working Group respectfully calls on the Legislative Assembly to review the legal provisions defining the offence of enforced disappearance, taking into account the comments made in this report on the shortcomings that the Working Group has detected, particularly with reference to the established penalties, in comparison with less serious offences for which heavier penalties are laid down than those established for the offence of enforced disappearance.

90. The Working Group recommends that El Salvador should take effective steps to guarantee and implement the rights to justice, truth, redress and rehabilitation. It therefore respectfully but forcefully urges the Legislative Assembly to amend the 1993 Amnesty Act substantially and bring it into line with the points made in paragraph 8 of the general comment issued by the Working Group on article 18 of the Declaration.

91. The Working Group recommends that the Government of El Salvador should take steps to implement what is laid down in article 5 of the Declaration, according to which, in addition to such criminal penalties as are applicable, those presumed to be responsible for enforced disappearances shall be liable under civil law. In other words, they must compensate the victims for any damage caused and shall be suspended from any official duties, in accordance with the provision in article 16, paragraph 1, of the Declaration.

92. The Working Group strongly recommends that El Salvador should create and implement an effective plan to search for disappeared persons, not limited to the search for missing children. It also recommends that the plan should include genuine participation by civil society organizations, in particular the families and loved ones of the disappeared persons, in the terms of article 13, paragraphs 1 and 4, of the Declaration. This institutional plan to search for disappeared persons should be sanctioned by the legislature.

93. The Working Group considers that, with regard to the comprehensive search programme suggested earlier, a comprehensive redress scheme should be implemented which, in the terms of article 19 of the Declaration, includes adequate compensation and other means including as complete a rehabilitation as possible, in full exercise of the right to justice and truth.

94. The Working Group calls on the relevant authorities to make available to the interested parties any information and documentation that might still be restricted, in order to improve the results of the search for

disappeared persons, in full exercise of the right to information. The Working Group urges the Legislative Assembly to revoke any legal provisions that might impede compliance with this recommendation and to create a legal framework on transparency and access to information, not only to make that possible, but also to make it compulsory that any information which may be useful for investigations into cases of enforced disappearances to be made available to the interested persons.

95. The Working Group urges both government and non-governmental bodies to work towards forging closer ties in order to solve the problems relating to the cases of enforced disappearance that have yet to be clarified.

96. The Working Group invites the Government of El Salvador, within 90 days from the date of publication of this report, to present the Working Group with a timetable showing the steps it intends to take in order to implement the recommendations of the Working Group, the dates by which each measure will be taken, and the dates by which it intends to complete implementation of the recommendations.

## **Equatorial Guinea**

### **Introduction**

During the period under review, the Working Group on Arbitrary Detention visited Equatorial Guinea from 8 to 14 July 2007 (please refer to document A/HRC/7/4/Add.3).

### **Conclusions** (A/HRC/7/4/Add.3, paras. 98-99)

98. Equatorial Guinea has enormous potential for economic development. The discovery of large oil reserves points to the advent of an era of great economic prosperity in the near future. However, the Working Group confirmed, and it could not be otherwise given the recent history of the country, that institution-building is still limited and the human rights culture has not taken sufficient root in institutions, in public moral awareness, or in the attitudes of individual citizens. The Working Group considers that there cannot be true development in the country if the current economic growth does not go hand in hand with institution-building, the enforcement of the rule of law and the genuine exercise of human rights.

99. The Working Group noted the progress made by the Government of Equatorial Guinea over the past few years towards providing the country with a legal framework, in conformity with the international instruments it has ratified, to enable it to develop into a democratic State. But this is not enough. There is a clear need to supplement this system as soon as possible, and at the same time to promote the determinants of balance between the different powers of the State, particularly the genuine independence of the judiciary. Only in this way would it be possible to prevent the continued occurrence of situations such as kidnapping abroad and secret detention, as referred to in this report, which belong to a past that is totally incompatible with the current positive process of change noted by the Working Group.

### **Recommendations** (A/HRC/7/4/Add.3, para. 100)

100. On the basis of the situation encountered during its visit to the country and the conclusions set out above, the Working Group invites the Government of the Republic of Equatorial Guinea to consider and apply the following recommendations:

- (a) To adopt the necessary measures to put an immediate end to the practice of secret detentions. The situation of Juan Ondo Abaga, Florencio Ela Bibang, Felipe Esono Ntumu and Antimo Edu Nchama, detained in secret in Black Beach prison, should be immediately remedied, as they were kidnapped in foreign countries where they had international refugee status;
- (b) To resolve the situation of the deprivation of liberty of individuals detained for simply exercising a right recognized by international human rights law, such as the right to freedom of opinion and expression, the right of assembly, the right of association and political participation (the exercise of which rights cannot be punished);
- (c) To consider the desirability of an urgent revision of the national criminal law framework, to bring it into line with the 1995 Constitution and the international instruments to which Equatorial Guinea is a State party. The Working Group therefore invites the Government to consider drafting a new criminal code and a new code of criminal procedure in accordance with those instruments. The Criminal Code should establish sentences that correspond to the seriousness of the offences defined, and provide for the possibility of community service and alternatives to imprisonment. The possibility of establishing systems of restorative justice should also be examined. There is an urgent need for the periodic publication of laws in an official gazette;
- (d) It is necessary to establish by law an independent judiciary. All the necessary measures should be taken to guarantee, in law and in practice, the independence of judges, prosecutors and lawyers, in accordance with the

Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers adopted by the General Assembly in 1985 and 1990, respectively. In that connection, the possibility of revising the Judiciary Organization Act should be studied. The objective conditions in which competitive examinations for the appointment of judges and law officers are to be conducted shall be established by law, as shall the disciplinary measures to which they could be liable, in order to guarantee their independence and irremovability;

(e) Judges and law officers should make periodic visits to prisons and police detention centres and the advisability of establishing criminal enforcement tribunals should be examined;

(f) The Working Group invites the Government to bring the legal framework for the organization, functioning and jurisdiction of military courts into line with international principles and standards. In that connection, the jurisdiction of military courts should be limited exclusively to military offences committed by armed forces personnel and they should have no jurisdiction to try civilians. Disputes as to the jurisdiction of military courts, in particular with regard to appeals against detention, should be settled by civil courts. The need to draft and promulgate a modern code of military justice that is consistent with the Constitution and the international instruments in force should be considered;

(g) Training for authorities, officials and police officers should continue. The training should aim to prevent human rights violations and abuses, and at the same time prevent and eradicate impunity. Human rights training courses should be extended to judges and law officers of all grades, members of the Office of the Attorney-General, lawyers, court-appointed defence counsel, regional and local authorities, and military officials;

(h) The current application procedures for habeas corpus, *amparo* and constitutional review should be revised and redesigned with a view to making them easier to use and more effective as remedies against violations of constitutional guarantees and human rights, and in particular against arbitrary detention. Lawyers should be guaranteed free access to police stations in order to be able to interview detainees from the beginning of their detention so that they can exercise these remedies. Likewise, lawyers' access to all prisons should be guaranteed;

(i) The national budget should guarantee the resources required to ensure the effective functioning of the justice administration system as well as the prison and police detention system. The necessary resources should be made available to ensure the provision of sufficient and adequate food, medical care, sanitation facilities and minimum conditions of habitability for persons detained in prisons and police stations;

(j) The authorities should take concrete steps and measures aimed at promoting, protecting and strengthening civil society institutions, in particular non-governmental organizations working in the field of human rights;

(k) The National Human Rights Commission should be strengthened and granted the facilities necessary to continue its visits to prisons and police detention centres;

(l) As far as possible, the detention of foreigners who enter the country without the necessary visa or who remain in the country once their visa has expired should be avoided. If the detention is necessary to ensure their expulsion from the country, a reasonable maximum duration of detention should be established. During their detention these persons should enjoy all the rights recognized to persons deprived of liberty by international instruments. The access of consular representatives to foreigners detained in prisons and police stations should be facilitated, and detainees should be able to communicate with their respective consulates. The situation of foreigners held in incommunicado detention should also be reviewed;

(m) The possibility of establishing a modern juvenile justice system should be examined and the presence of minors in prisons and detention centres alongside adults should be prohibited.

## Estonia

### Introduction

During the period under review, the Special Rapporteur on racism visited Estonia from 16 to 28 September 2007 (please refer to document A/HRC/7/19/Add.2).

### Recommendations (A/HRC/7/19/Add.2)

85. State authorities in the executive, legislative and judiciary powers should constantly reaffirm their political will and commitment to fight all forms of racism and discrimination. In particular, they need to be proactive and vigilant concerning the new challenges that arise from growing migration, multiculturalism and the dynamics of identity transformation. It is especially important to firmly condemn any racist or xenophobic action or discourse, including by political parties and the media.

86. Through its close interaction with its neighbours throughout the centuries, Estonia has developed a societal basis of tolerance and multiculturalism that still exists in the heart of its society. State authorities and civil society should build on these plural traditions to strengthen all actions against racism and discrimination and to promote a democratic multiculturalism that will be central to include new minorities into the Estonian society.

87. In what concerns the legal framework to fight racism and discrimination, despite the existence of separate provisions in different legislation, including the general principle of non-discrimination enshrined in the Constitution, the Special Rapporteur recommends that the Government adopt national holistic legislation covering all forms of discrimination in a comprehensive legal act. It is particularly important that this legislation be precise in terms of the punishment and prosecution of racially motivated crimes and incitement to racial hatred. This would complement the relevant legislative basis that already exists in Estonia and, most importantly, ensure that no protection gaps remain.

88. The Special Rapporteur recommends that the Government develop best practices and general guidelines for the prosecution of cases of incitement to racial hatred and racially motivated crimes, developing clear criteria for the threshold of evidence that is required to be presented and for the investigative conduct of law enforcement officials. Whilst developing these guidelines, the Government should bear in mind the need for the prohibition of incitement to racial, religious or ethnic hatred established by Articles 151 and 152 of the Estonian Penal Code, Article 20 of ICCPR and Article 4 of ICERD.

89. The Government should further strengthen the capacity of the Chancellor of Justice, including in terms of financial and human resources, to act on allegations of racist crimes and incitement to racial, ethnic or religious hatred. To complement the role of the Chancellor of Justice, the Special Rapporteur recommends that the Government put in place an independent institution entrusted with a mandate to fight discrimination. Rather than duplicating the role of the Chancellor of Justice, this institution would be responsible for linking the fight against discrimination with the active promotion of multiculturalism as the long-term solution to all forms of discrimination.

90. In what concerns the issue of statelessness, the Special Rapporteur recommends that Estonia accede to the 1954 Convention relating to the Status of Stateless Persons as well as the 1961 Convention on the Reduction of Statelessness. Such a decision would strengthen the protection of minorities in Estonia and highlight the Government's commitment to finding an equitable solution to the problem.

91. The Special Rapporteur recommends that the Government revisit the existing requirements for naturalization with a view to facilitate the granting of citizenship to persons of undefined nationality. In particular, the Government should facilitate the citizenship procedures for vulnerable groups, including elders and economically marginalized segments. This should involve the offer of free-of-charge language courses for all non-citizens that wish to apply for citizenship, as partially foreseen in the Programme for Integration of Society (2008-13). The Government should also consider appropriate measures to tackle the low level of registration as citizens of children born in Estonia after 20 August 1991 to non-citizen parents. These measures could include granting automatic citizenship at birth, without a requirement of registration by the parents, to those children born to non-citizen parents who do not acquire any other nationality.

92. As a matter of priority, the Special Rapporteur recommends that the language policy in Estonia be subject to an open, democratic and inclusive debate, in close consultation with ethnic minorities and human rights organizations, aiming at elaborating consensual strategies that better reflect the multilingual character of its society. This process should aim at promoting the living together of all the communities in Estonia on the basis of two principles: first, the legitimate right of the Estonian government to disseminate Estonian language among all residents and avoiding the process of asymmetric bilingualism that characterized the Soviet occupation; second, the respect for the existence of minority languages spoken by sizeable communities, in particular Russian, in full compliance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular, Article 2.1: “persons belonging to national [...] minorities have the right to [...] use their own language, in private and in public, freely and without interference or any form of discrimination”; Article 4.2: “States shall take measures to create favourable conditions to enable persons belonging to minorities to [...] develop their culture, language, religion, traditions and customs” and Article 4.3: “States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue”. Specific measures could be taken to allow linguistic minorities to reach the adequate language proficiency level demanded by the nature of their occupation, including the provision of free-of-charge Estonian language courses.

93. The Government should establish a broad process of consultation with a view at diminishing the gap in historical perceptions between the Estonian and Russian-speaking communities. In particular, a collective writing by local and international scholars of a common history of the region that is accepted and recognized by all communities would represent a significant step to foster understanding and tolerance and would facilitate the teaching of history at schools, which is viewed as one of the main obstacles to the living together of the different communities.

94. Particular attention should be granted to the vulnerable situation of the Roma community. The Government should reinforce its programmes, drawing attention to general recommendation 27 of the Committee on the Elimination of All Forms of Racial Discrimination on discrimination against Roma. In particular, specific measures should be taken to improve the educational attainment of Roma children and to reduce dropout rates. The Programme should also promote a sensitization effort among the Estonian society at large to Roma history, traditions and living cultures, including their fate during the Holocaust, in order to eliminate the negative stigma and stereotypes that Roma are recurrently associated with.

95. The Government should develop mandatory training schemes for all law-enforcement officials, including border guards, focusing on human rights education in general and racism and discrimination in particular, following the successful in-house programme developed by the Citizenship and Migration Board. A multicultural composition and training of these officials will improve their relations with minority communities and respect thereof. Additionally, adequate mechanisms should be put in place to identify and punish unprofessional performance of law-enforcement officials when dealing with minorities, in particular in cases of harassment and racial, ethnic or religious profiling.



96. The Government should strengthen its cooperation with all societal actors, in particularly civil society organizations that have been playing an important monitoring role for human rights violations. Civil society should be encouraged to further its work in providing legal counsel to victims as well as access to international instruments, both at the international and regional levels.

97. In parallel with a political and legal strategy, the Government, in cooperation with the civil society, should adopt an ethical and cultural strategy that addresses the deepest roots of racism, xenophobia and intolerance and is built around the promotion of reciprocal knowledge of cultures and values, the interaction among the different communities and the link between the fight against racism, xenophobia and discrimination and the long-term construction of a democratic, egalitarian and interactive multicultural society.

## Fiji

### Introduction

During the period under review, the Working Group on the use of mercenaries visited Fiji from 14 to 18 May 2007 (please refer to document A/HRC/7/7/Add.3).

### Conclusions (A/HRC/7/7/Add.3, paras. 46-50)

46. The Working Group notes that Fiji has an established tradition of well-trained, disciplined and highly skilled military and security personnel who perform security functions in various capacities worldwide. Several interlocutors confirmed their experiences that Fijians are reliable in hot spots and are very professional, stress-resistant and appreciated colleagues. The Working Group notes that security work is a major source of income for the country and for individuals and local communities; third only to a US\$ 6 billion sugar industry and a US\$ 2 billion tourism industry. Remittances of overseas work are crucial for many rural areas in Fiji. It appears to be this mixture of supply and incentives, coupled with a limited to non-existent legal framework, which has created a breeding ground for the recruitment of Fijians to work for PMSCs.

47. The Working Group is concerned by information it has received indicating that Fijians recruited by private security companies have been exploited. As indicated above, thousands of Fijians have in recent years been lured into paying fees for prospective security work abroad which did not materialize. The information received also indicates that in a number of cases, contracts were signed under fraudulent conditions, either immediately upon departure or upon arrival in the country of destination. Many Fijians have also experienced contractual irregularities and poor working conditions, including excessive working hours, partial or non-payment of salaries, ill-treatment and the neglect of basic needs such as access to medical services.

48. The Working Group is concerned by the absence or limited reintegration measures available to Fijians who have performed security work abroad upon the return to their communities in Fiji.

49. The Working Group is concerned at the absence of national legislation and measures in Fiji to effectively address these issues. It encourages the Fiji authorities to take positive action in order to ensure that private military and security companies in Fiji operate within a legal framework in full accordance with international human rights standards.

50. The Working Group is also concerned by persistent forms of traditional mercenarism in the region, in particular by the situation in the autonomous island province of Bougainville in Papua New Guinea, where former Fijian soldiers were recruited in 2005 to undertake mercenary activities.

### Recommendations (A/HRC/7/7/Add.3, para. 51)

51. The Working Group wishes to submit the following recommendations:

- (a) Accession of Fiji to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
- (b) Development of national legislation to address mercenaries, mercenary-related activities and the activities of private companies offering military assistance, consultancy and security services on the international market. This can take place through the introduction of such elements into the Penal Code and/or Employment Act, or through the elaboration of a separate comprehensive law;
- (c) Establishment of a system for regulating, licensing, controlling and monitoring the activities of private security companies in order to provide effective oversight, whereby the authorities would maintain transparent

registers of private security companies on all matters such as ownership, statutes, purposes and functions as well as a system of regular inspections to ensure accountability;

(d) Certification of the services provided by private security companies and of their personnel training; and oversight by the Ministry of Security of entrance tests and recruit training and preparation in accordance with approved standards. Personnel training should cover United Nations rules on the use of firearms and on the protection of human rights, such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(e) Status checks on private security company directors, shareholders and executives, as well as all personnel, to ensure that they have not previously been implicated in human rights violations and that there are no conflicts of interest between posts held by members or former members of the military or police and their involvement in private security companies;

(f) Establishment of a “Commissioner for Private Military and Security Companies”, who could be a part, institutionally speaking, of the Ministry of Public Security, with a mandate to register and monitor private military and security companies operating in Fiji and receive complaints. The Working Group suggests that such a mechanism could undertake joint inspections with the Ministry of Labour, with a mandate to make announced and unannounced visits in this oversight role;

(g) Adoption of measures to address issues of reintegration and post-traumatic stress disorder in individuals returning from security work abroad through the establishment of a comprehensive system of debriefing and professional counselling;

(h) Adoption of measures by the competent authorities allowing them to act with speed and vigour on complaints submitted by individuals who have returned from Iraq, and to consider the complicity and responsibility of private security companies and individuals involved;

(i) Accession to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as these instruments would also strengthen the protection of Fijians contracted for security work abroad.

## France

### Introduction

During the period under review, the Independent Expert on minority issues visited France from 19 to 28 September 2007 (please refer to document A/HRC/7/23/Add.2).

### Recommendations (A/HRC/7/23/Add.2, paras. 75-96)

75. In spite of important national anti-discrimination legislation, serious racial discrimination is experienced by members of minority communities in France that is entrenched and institutionalized in nature. A political culture of denial has been an obstacle to effective measures to fully implement non-discrimination laws and to take concrete steps to address the complex inequalities that have been generated. The recent explosions of urban discontent have alerted authorities to the need for change.

76. The independent expert urges the Government to take fully into consideration the analysis of the present report in developing policy responses to the urban upheavals. The most important actions that can be taken by Government lie in addressing the underlying causes of discontent and working towards structural solutions. Acknowledgement of the reality

77. The Government of France is urged to: (1) recognize the existence of national or ethnic, religious and linguistic minorities within its territories and to withdraw its reservation to article 27 of the International Covenant on Civil and Political Rights relating to the rights of persons belonging to minorities and article 30 of the Convention on the Rights of the Child; and (2) ratify the European human rights treaties relating to the rights of minorities, including Protocol No. 12 to the European Convention on Human Rights and the Council of Europe's Framework Convention on the Protection of National Minorities.

### Guarantees of non-discrimination and equality

78. France's anti-discrimination legislation should be amended to allow the imposition of penalties and fines for discriminatory practices that are sufficiently severe as to act as a deterrent to future violations. Legislation should also be amended to grant HALDE meaningful enforcement powers when there is a failure to comply with agreed settlement fines. Courts should impose more severe penalties for discriminatory acts, as allowed for under the Penal Code.

79. Robust affirmative action policies should be put in place to counter the effects of long-term discrimination against minorities. The independent expert encountered strong opinions both for and against affirmative action policies, from civil society groups and governmental sources. The terminology of "positive discrimination" was commonly used, which she believes creates misleading perceptions of "privileges" given to people from certain sectors of society at the expense of others. Using such terminology sabotages public support from programmes that generate equality in ways that benefit everyone.

80. A wider debate is required on the issue in France that is open, informed and inclusive, and that builds on the experiences of other United Nations Member States and the recommendations of regional and international institutions. Such a debate should be framed by the concept of special measures/affirmative action as it is understood in international standards, including articles 1.4 and 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination.

81. The independent expert shares the view of the Committee on the Elimination of Racial Discrimination that efforts to combat discrimination in France are hampered by inadequate statistical information on the grounds of race, ethnicity or religion. She welcomes the current debate regarding the use of statistical data, including its constitutionality, and hopes this debate will continue to be informed by the experiences and practice of other European countries.

82. The collection of data regarding the socio-economic status of the population disaggregated by ethnic and religious identities as well as along gender lines is recommended as an essential tool to reveal the full extent of social problems experienced by persons belonging to different ethnic and religious minority groups. Such data will assist in the development of appropriate and effective policies and practices to combat the effects of discrimination.

83. The Government should undertake confidence-building and awareness-raising measures among all communities, including minority groups, to promote and encourage participation in voluntary data collection, including census registration, and allay fears that data collection will be used as a means of deepening rather than combating discrimination.

84. The Inter-Ministerial Committee to Combat Racism, Anti-Semitism and Xenophobia has been inactive since 2005 and should be reinstated and convened on a regular basis. Such a body offers the potential to ensure coordinated policies and practices across the ministries, recognizing their interrelated mandates and the need for holistic approaches in efforts to combat racism and discrimination and to promote the rights of minorities.

85. Following consultations with the High Commissioner for Active Solidarity Against Poverty in France, the independent expert notes that policy initiatives designed to address the needs of the poor as an aggregate group rather than targeting the specific nature of the obstacles faced by minority groups will fail to create sustainable solutions to their poverty, highlighting the recommendations of the 2007 report *Minorities, Poverty and the Millennium Development Goals*.

#### Discrimination in employment

86. The public sector must lead by example in promoting and ensuring equality, non-discrimination and diversity, in order to send a clear message to all sectors of society. The Government should undertake more aggressive strategies to dramatically increase the number of people with immigrant heritage in the public service, particularly the police, civil service and the judiciary, in order better to reflect the broad diversity within French citizenry. These efforts should be evaluated on the basis of results or outcomes, using statistical data disaggregated to reveal the number of visible minorities who have been newly employed and their advancement. In the private sector, anonymous employment applications should be encouraged.

#### Discrimination in housing

87. The independent expert welcomes proposed initiatives to improve housing and living conditions in French suburbs. However, she considers that substantial investment in urban renewal should be just one component of a much wider policy package, which includes employment and education in the broader context of dedicated anti-discrimination initiatives. She emphasizes that priority should be given to ensuring that new or renovated housing is first offered to long-term residents of such suburbs.

88. When communes fail to meet the regulations regarding the availability of a specified percentage of social housing that must be allocated to poor families, they should be severely penalized to the limit specified in the law. The Government should establish effective means to monitor compliance with the laws in this regard.

89. Furthermore, the severe penalties currently foreseen in law should be imposed on municipalities that violate laws adopted to implement the rights of individuals belonging to Gypsy/Traveller communities. No municipality should be allowed to disregard the law with impunity.

#### Discrimination in education

90. The Government should evaluate its current programmes that focus on under-achieving schools against specific studies on the educational obstacles faced by minority students, both those of immigrant heritage and those from Gypsy/Traveller communities. Special measures should be adopted to guarantee the right to education in mainstream schools for children of Gypsy/Traveller families. Steps should be taken to protect the right of those children to not be segregated into schools or classes for the learning impaired when there is no evidence of need.

#### Inclusion of minority women

91. Women from the various minority groups in France face complex issues and specific challenges. In addition to discrimination in the fields of education, employment and housing, they are often confronted with specific challenges relating to family matters when their immigration status is tied to that of their husband. Divorce proceedings in foreign courts of certain countries can create problems for the realization of rights that they might have under French law. These special concerns require targeted attention and dedicated resources within relevant ministries and local and regional authorities.

92. The full and effective participation of minority women must be seen as an essential component of Government and civil society efforts to address their issues. The establishment of an advisory body to HALDE on minority women's issues should be considered as a means of gaining the views and experiences of minority women and assisting in the planning, design, implementation and evaluation of policies in order to address their specific issues and concerns.

#### Promotion of language, religion and cultural rights

93. The independent expert supports calls for France to ratify the European Charter for Regional or Minority Languages, which provides valuable guidance to all European States in their treatment of such issues, and for the preservation and promotion of the rich cultural and language heritage of each State. The Government of France should support the use of regional and minority languages as a medium of instruction in the early years of public primary education for students who so request.

94. The independent expert supports the conclusions and recommendations which the Special Rapporteur on freedom of religion or belief stated in her report on her visit to France in 2005, namely, that Law 2004-228 of 15 March 2004 on "laïcité" and the wearing of conspicuous religious symbols in public schools "constitutes a limitation of the right to manifest a religion or a belief [...] and has mainly affected certain religious minorities, and notably, people of a Muslim background". The independent expert supports the Special Rapporteur's recommendation that the Government should closely monitor the way that education institutions are implementing the law and adopt a flexible implementation of the law which would accommodate schoolchildren for whom the display of religious symbols constitutes an essential and freely chosen element of their faith.

#### Enhancement of political participation

95. Full and effective participation in national and regional political structures, as well as representation within key government ministries and institutions, is essential to future efforts to protect and promote the

rights of minorities. Political parties in France should seek ways to increase the number of persons belonging to minorities that win election to national regional and local government structures.

96. The Government of France should establish consultative bodies of persons belonging to minorities to facilitate the full and effective participation of minorities in all decisions that affect them, and in the planning, design, implementation and evaluation of policies and programmes in respect of minority issues and those which impact on the lives of minorities.

## Ghana

### Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited Ghana from 9 to 15 July 2007 (please refer to document A/HRC/7/6/Add.3).

### Conclusions and recommendations (A/HRC/7/6/Add.3, paras. 89-93)

89. The realization of commitments to gender equality made under the Constitution, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Declaration on the Elimination of Violence against Women (DEVAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa remains a challenge to the Ghanaian Government and society at large, as women and girls continue to hold a subordinate status. The Domestic Violence Act of 2007 marks an important step forward, which needs to be swiftly followed by the adoption of a domestic violence action plan and an earmarked budget to implement the Act.

90. Violence against women is widespread and some groups of women are particularly vulnerable. The girl child may be sexually abused in the family, subjected to early or child marriage or exploited as a *kayeye* or domestic worker. Female genital mutilation (FGM) and ritual servitude of *trokosi* also remain prevalent in some parts of the country, even though these practices have been criminalized and are on the decrease. Some women are accused of practising witchcraft and driven violently from their communities. Widows are often deprived of their inheritance and in some places subjected to humiliating and abusive widowhood rites. The police, courts, social services and the health sector are not sufficiently equipped and trained to effectively protect women facing violence.

91. Constitutionally recognized traditional authorities and the customary law, which wield considerable influence in rural areas, often pose additional challenges for the advancement of women. The State authorities, civil society and the international community need to engage and, where necessary, compel the customary system to fully respect the rights women and girls are entitled to under the Constitution and international law.

92. High levels of poverty and the external debt burden limit the Government's margin of operation to prioritize the allocation of sufficient resources for universal basic education, gender parity in education and the economic and social development of marginalized regions and districts. The international community has a responsibility to support the Government's efforts to promote gender equality and eliminate violence against women through targeted funding and technical cooperation, further debt relief and, perhaps most importantly, fairer terms of trade.

93. In the light of my findings, I would like to make the following recommendations to the Government and other relevant actors:

#### Political leadership and policy development

- Denounce publicly and unequivocally all forms of violence against women and girls including marital rape, wife beating, child and other forced marriages, *trokosi*, FGM, humiliating widowhood rites and inheritance/property grabbing. Elected politicians, officials, traditional authorities and other persons vested with public authority must not invoke any custom, tradition or religious consideration to justify or condone such violence. They should also discourage the practice of dowry and polygamy and publicly question the existence of harmful witchcraft;



- Engage traditional authorities at all levels in a frank and public dialogue, about how traditions and customary laws can be reformed to respect the rights of women guaranteed under the Constitution and international law;
- Ensure the compliance of the House of Chiefs with the constitutional mandate to evaluate traditional customs and practices, with a view to eliminating those that are outmoded and harmful, including customs that discriminate against women; publish and widely disseminate an annual report documenting progress made in this regard;
- Ensure that at least 50 per cent of district assembly members appointed by the President are women. Political parties should adopt special temporary measures to enhance women's access to leadership positions within the party and field at least 30 per cent female candidates in "safe" voting districts that their political party is likely to win.

### Legislative reform

- Enact, within this parliamentary term, the bill on the property rights of spouses. Parliament should consider amending the existing bill, so that all property acquired by any of the spouses during marriage (other than bequests, third party gifts or damages for personal suffering) is equally divided between the spouses;
- Review and simplify the Intestate Succession Law, to strengthen women and children's protection under the Law;
- Enact a gender parity law based on the 1998 Affirmative Action Policy Guidelines as binding law and implement the 40 per cent quota for women in decision-making foreseen by the Guidelines;
- Ensure the full extraterritorial application of section 69A of the Criminal Offence Act and penalize Ghanaian nationals or permanent residents, who instigate or participate in acts of FGM carried out in another country, regardless of whether these acts are criminalized in that country;
- Demystify the beliefs around witchcraft and sorcery and criminalize acts of undue accusations of persons of causing harm through the use of supernatural powers.

### Budgetary allocations

- Earmark adequate funds in future budgets to implement the Domestic Violence Act and the corresponding domestic violence action plan;
- Continue to prioritize free and universal basic education for girls and boys. Expand the school capitation programme to ensure that all direct and indirect costs of schooling are covered. Continue, with the support of the international community, the school feeding programmes for marginalized districts launched by the World Food Programme;
- Prioritize the socio-economic development of marginalized regions and districts, especially in the northern part of the country;
- The international community should promote these priorities through a targeted funding programme, the Multi Donor Direct Budget Support, the Highly Indebted Poor Country (HIPC) Initiative, further debt relief and the implementation of fair terms of trade in relation to agricultural products. Law enforcement and policy implementation
- Educate judges, police officers and district chief executives and other relevant authorities about the Domestic Violence Act;
- Carry out a needs assessment, in cooperation with United Nations agencies and civil society groups, on how to implement section 7 of the Domestic Violence Act; develop and adopt by the end of 2008, in consultation with concerned Ministries, civil society and the international community, a comprehensive domestic violence action plan focusing on violence against women and children;
- Support civil society in setting up and running shelters to protect women and children at risk of violence. Provide victims of domestic violence, in accordance with section 8 of the Domestic Violence Act, with free medical treatment, including a free medical certificate documenting injuries suffered;

- Educate traditional authorities, religious leaders, and other local opinion leaders about the rights of women and children under the Constitution, the Domestic Violence Act, the laws against FGM and ritual servitude, the Intestate Succession Act, the Children's Act, the Protocol on the Rights of Women in Africa, CEDAW and DEVAW;
- Enforce the law against ritual servitude, publicly support civil society organizations working towards its implementation and prosecute anyone who continues to organize the ritual servitude of *trokosi* or other harmful practices;
- Take special measures, in collaboration with the Commission on Human Rights and Administrative Justice, to enhance women's awareness of their rights and legal literacy to enable them to claim their rights;
- Call to order traditional authorities who illegally usurp State powers and prosecute anyone who "settles" serious crimes such as rape or sexual abuse of minors, instead of reporting them to the State authorities;
- Allow and encourage pregnant girls to stay in school.

#### Awareness-raising

- Discourage early marriages and promote the value of girls' education; sensitize parents and the public in this regard;
- Promote, through media, school and public campaigns, gender roles and relations that are compatible with human rights and equality norms, including masculine images that are de-linked from domination and violent expressions of power, and challenge prejudices underlying the abuse of girls and women, including the notion of witchcraft;
- Remove from school books and curricula any references promoting gender stereotyping, discrimination and violence;
- Promote gender-sensitive media reporting to avoid stereotypes and discriminatory attitudes towards women, and ensure respect for victims and their families when covering incidents of violence against women;
- Support researchers and statisticians to improve research and data collection on violence against women and gender issues, including gender dimensions of HIV and AIDS. Include in the 2008 Demographic and Health Survey and the 2010 census modules to measure the prevalence, incidence and severity of domestic violence against women, men and children. Compile crime statistics that reflect the relationship between perpetrator and victim and disaggregate all official statistics on the basis of sex.

#### International cooperation

- Initiate and foster regional and international cooperation against all forms of violence with transnational links, including trafficking in persons, FGM and ritual servitude. Encourage neighbouring countries, which have not done so, to pass comprehensive criminal legislation against these acts;
- Consider signing and ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- Invite the Special Rapporteur on the sale of children, child prostitution and child pornography to carry out an official visit;
- Issue a standing invitation to all special procedures of the Human Rights Council and monitoring mechanisms of the African Commission on Human and Peoples Rights;
- The international donor community should prioritize targeted funding for local civil society initiatives that support those women who are most at risk of violence, including elderly women, widows, *trokosi*, women and girls in prostitution, refugee women, *kayaye*, domestic workers and other girls engaged in

- harmful child labour; and collaborate with the United Nations Country Team to promote and support women's empowerment programmes in Ghana;
- The United Nations Country Team should integrate gender analysis into all its activities, including the more seemingly technical areas such as agricultural support programmes, assist the Government and civil society in their effort to develop a sound database on violence against women, its causes and consequences, and promote and disseminate the recommendations contained in this report.

## **Haiti**

### **A/HRC/8/2**

For personal reasons beyond his control, Mr. Louis Joinet, independent expert appointed by the Secretary-General on the situation of human rights in Haiti, has been unable to carry out his last mission to Haiti, initially planned for late 2007.

Mr. Joinet very much regrets that he will not therefore be in a position to present his report to the Human Rights Council at its eighth session in June 2008.

## Honduras

### Introduction

During the period under review, the Working Group on Enforced or Involuntary Disappearances visited Honduras from 31 January to 2 February 2007 (please refer to document A/HRC/7/2/Add.1).

### Conclusions and recommendations (A/HRC/7/2/Add.1, paras. 60-66)

60. Firstly, the members of the Working Group wish to express their deep appreciation for the considerable support provided by the Government of Honduras in order to ensure the success of this mission. The Working Group was able to perform its tasks quite freely, interviewing senior officials of the Government of Honduras and members of various non-governmental organizations and organizations of relatives of victims of enforced disappearance, with whom it held an open and objective dialogue. In order to obtain a balanced picture, the Working Group considers it essential to hold information-gathering meetings with both official and civil-society sources, especially those concentrating on the search for victims of enforced disappearance.

61. The principal purposes of the visit were to gather information which might serve as a basis for clarifying cases of enforced disappearance in Honduras and to discuss possible efforts which might be made by the Government, in cooperation with the Working Group, to deal with cases of enforced disappearance in the light of international human rights standards, especially the Declaration.

62. As regards clarification of cases pending before the Working Group, it may be concluded that, despite some praiseworthy efforts on the part of the Government to clarify some of these cases, those efforts appear to have been isolated and unsystematic, underlining the clear lack of a comprehensive search plan for missing persons.

63. The same conclusion may be drawn with regard to a few favourable outcomes in relation to redress for relatives of victims of enforced disappearance.

64. Concerning the legal framework in Honduras applying to enforced disappearances, the Working Group concludes that major gaps remain, particularly in relation to the lack of a separate statutory definition which adequately covers the offence of enforced disappearance. The Working Group welcomes reports that Honduras has established contact with the Office of the United Nations High Commissioner for Human Rights in order to secure the technical assistance required to implement the necessary legislative reforms in this area.

65. As a result of the existing legal loopholes, and other limitations detailed in this report, a climate of impunity has prevailed in Honduras equivalent to the measures referred to in article 18 of the Declaration, which should be avoided.

66. In the light of the above, the Working Group wishes to put forward the following recommendations, while expressing the hope that they will be taken up and put into effect by the Government of Honduras as soon as possible.

(a) It is recommended for the attention of the Honduran Parliament that enforced disappearance should be classed as a separate offence in the Criminal Code, and that the legislation to be adopted should:

- (i) Specify penalties which are commensurate with the extremely serious nature of the offence;
- (ii) Respect the principle that the essential characteristic of the unlawful conduct is that it is a continuing offence;

(iii) Not class orders from a superior or emergency situations as factors which relieve the perpetrator of responsibility or diminish it, but take account of the provisions of article 17, paragraph 3, of the Declaration and article VII of the Inter-American Convention on Forced Disappearance of Persons, in relation to the statute of limitations for the offence in question;

(iv) Stipulate that those responsible for the offence of enforced disappearance shall be tried only by the competent ordinary courts, in each State, and not by any other special tribunal, in particular military courts;

(b) The Working Group respectfully suggests that Honduras should become a party to the new International Convention for the Protection of All Persons from Enforced Disappearance;

(c) The Working Group wishes to recommend to the Government of Honduras that it should take steps to put into effect the provisions of article 5 of the Declaration, which provides that, in addition to the applicable criminal penalties, the alleged perpetrators of enforced disappearances bear general civil liability. That is, they must compensate the victims for harm caused and must suffer administrative disqualification, in accordance with article 16, paragraph 1, of the Declaration;

(d) Despite the praiseworthy efforts made by the Government of Honduras to search for missing persons, the Working Group considers that greater progress could be made and better results obtained if there was an institutional search mechanism for missing persons. It is desirable that such a mechanism should be set up through legislation, that it should comply with the Paris Principles and that it should enjoy full access to important information in pursuance of the right to truth;

(e) In the context of the mechanism suggested in the preceding paragraph, the Working Group considers that a comprehensive programme of redress should be instituted, to include adequate compensation and other means of redress, such as the fullest possible rehabilitation, in a spirit of full respect for the right to justice and truth;

(f) The Working Group urges the governmental and non-governmental bodies to establish cooperative links with a view to solving the problems related to cases of enforced disappearance which have not yet been clarified. It also recommends that the organizations of relatives of missing persons and other human rights organizations should maintain close links and coordination so as to strengthen their activities and ensure the achievement of their objectives;

(g) The Working Group invites the Government of Honduras to submit to the Working Group, within 90 days from the date of publication of this report, a timetable indicating the steps that will be taken to put into effect the recommendations of the Working Group, the dates scheduled for each of these steps and the dates on which it is expected to complete the implementation of the recommendations.

## Indonesia

### Introduction

During the period under review, the Special Representative of the Secretary General on the human rights situation of human rights defenders as well as the Special Rapporteur on torture visited Indonesia.

The Special Representative of the Secretary General on the situation of human rights defenders visited Indonesia from 5 to 13 June 2007 (please refer to document A/HRC/7/28/Add.2).

### Conclusions (A/HRC/7/28/Add.2, paras. 84-88)

84. Since 1998, Indonesia has achieved remarkable progress towards democracy by notably strengthening the legal and institutional framework for the promotion of human rights. However, this progress has been marred by the absence of concrete measures dealing directly with the protection of human rights defenders as well as flaws in the existing legislation. There are also serious constraints on the functioning of many of the institutions in place and their ability to fulfil their mandates effectively. The Special Representative is nevertheless encouraged by the willingness within the State apparatus to address these shortcomings.

85. In the vast majority of cases of violence against human rights defenders, police and military forces are the perpetrators of such violence. This widely documented pattern is due to the strong resistance from both entities to change attitude and institutional culture. Human rights defenders in Indonesia and the international community are expecting that the Government will ensure justice in the case of Munir and that the perpetrators of this crime will be brought to justice.

86. The Special Representative remains concerned about the situation of human rights defenders in West Papua and believes that their ability to defend human rights is adversely affected by the political conditions generated by the increased military presence in the province. The non-implementation of the Special Autonomy Law has heightened tensions that result in protest against repressive policies and targeting of human rights defenders who raise such issues.

87. As for the situation of defenders in Aceh, the Special Representative welcomes the improvement of this situation, although concerns remain with regard to surveillance activities by law enforcement authorities, stigmatization of defenders, restrictions that affect the work of women human rights defenders, and the score of unresolved cases.

88. The Special Representative looks forward to a sustained dialogue with the Government, notably by improving the ratio of responses to communications sent, and hopes that there will be a more uniform progress on the protection of human rights defenders in all parts of the country. Given its size, its population and its rich cultural diversity, Indonesia could set an inspiring example in the region.

### Recommendations (A/HRC/7/28/Add.2, paras. 89-101)

89. With a view to improving the legal framework of NGOs, the Special Representative urges PLA Commission No. 3 on Human Rights and the Government to discuss the reform of Law 8/1985 as a priority.

90. The Special Representative recommends that legislation and procedures be instituted to prevent the prosecution of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of human rights. For this purpose, it is important also to sensitize judicial and prosecutorial officials as well as the police so that human rights activities are not criminalized.

91. The Special Representative notes that several cases of gross human rights violations brought before the Supreme Court ended up in acquittals. Prospects for successful prosecution of gross human rights violations would be greatly strengthened if guidelines and standards are laid down by the Supreme Court for effective investigation, with directions that compel investigation and prosecution agencies to ensure that cases are based on investigations conducted under those guidelines.

92. The Special Representative particularly recommends that better system of coordination and support be created within Komnas HAM in order to ensure that regional representatives are able to operate effectively. They must receive full and timely support of the Commission if there is interference in their functioning or they are at risk in their regions.

93. The Special Representative notes that there are no standard operating procedures that ensure interaction with civil society in the work of Komnas HAM. By involving civil society and using its expertise in inquiries, national human rights institutions would endorse the legitimacy of the work of human rights defenders and contribute to recognition of their role.

94. The Special Representative further urges Komnas HAM to disseminate the Declaration on Human Rights Defenders in Bahasa Indonesia throughout the country.

95. The Special Representative urges the authorities to endorse the findings and recommendations of Komnas Perempuan, which is in need of greater visibility among the State apparatus.

96. The Special Representative urges the Ministry for Law and Human Rights to give more visibility to local human rights committees and to allow interaction with human rights defenders whose voices should be heard before these committees.

97. As regards law enforcement authorities, there is an acute need to train military and police officers specifically on the content of the Declaration of Human Rights Defenders. Heads of military and police may consider issuing clear instructions to prevent future cases of violations against human rights defenders and instructing commanders in the field not to make irresponsible comments about defenders which discredit their activities and put them at risk of reprisals.

98. The Special Representative calls on the military to create special complaint cells for registering and redressing incidents of harm or threats to human rights defenders. She particularly welcomes the commitment made by the Chiefs of Military in West Papua and Aceh to establish such a mechanism.

99. In the context of the Special Representative's concern regarding surveillance activities against defenders carried out by intelligence personnel, she observes that in Aceh, many military officers are not aware that under the terms of the Memorandum of Understanding, surveillance of civilian activities is no longer within their sphere of authority. A similar trend was reported in West Papua, where the military is heavily engaged in surveillance activities. Democratic oversight of intelligence under laws and regulations fully respectful of human rights standards may protect human rights defenders against any abuse of law and authority. The Special Representative is concerned that the draft Intelligence Act may not sufficiently address the lack of accountability of intelligence services in order to ensure prevention of abuse. She therefore urges a review of the draft law to ensure its efficacy in this regard.

100. The Special Representative also urges the Government to review administrative procedures in order to remove restrictive regulations that impede the right of defenders to freedom of assembly and of association.

101. Finally, the Special Representative calls on the Government to release the report of the TPF presidential fact-finding team on the killing of Mr. Munir Said Thalib and act on the recommendations laid down in the report.



## A/HRC/7/3/Add.7

The Special Rapporteur on torture visited Indonesia from 10 to 23 November 2007 (please refer to document A/HRC/7/3/Add.7).

### **Conclusions** (A/HRC/7/3/Add.7, paras, 63-71)

63. The Special Rapporteur commends the Government for the positive steps taken since the end of the Suharto era, notably its accession to international human rights instruments, a number of legislative reforms and good practices that he observed, in particular in the penitentiary system, putting emphasis on reintegration and favouring contacts with families and the community. However, several issues of concern remain.

64. Whereas in some police stations he did not receive any allegations of ill-treatment, in other facilities, in particular in urban areas, torture and ill-treatment is used routinely to extract confessions or in the context of drug charges to reveal dealers/suppliers. In three police stations, the Special Rapporteur arrived while beatings were taking place, and in several places he found persistent medical evidence of several types of ill-treatment, which are in line with reports by prisoners and various other credible sources received prior and during his visit. In prisons, only a very limited number of torture cases were reported; however, corporal punishment is regularly practiced in a number of detention facilities.

65. Several elements, such as the lack of a definition and prohibition of torture in accordance with the Convention against Torture, the lack of legal safeguards with regard to detention, the lack of criminal prosecution and the absence of an independent monitoring mechanism create an environment which is conducive to torture and ill-treatment.

66. The existence of torture is also facilitated by the lack of awareness and (appropriate) action of other stakeholders in the criminal law system, such as members of the medical profession, judges and lawyers. Furthermore, traces of ill-treatment during police interrogation can be easily hidden due to the excessive length of 61 days of police custody.

67. The Special Rapporteur is of the opinion that conditions in prisons in most cases live up to international standards. However, the conditions in heavily overcrowded cells and detention halls in prisons visited on Java amount to inhuman and degrading treatment. The quantity and quality of food, as well as the restricted or late access to medical services, in particular for serious cases, is a concern in practically all places he visited.

68. Conditions in police custody in most cases meet international standards for short-term detention of not more than a few days. The cells in police lock-ups are, however, not equipped for long-term detention. The fact that under Indonesian law and practice persons can be detained for several weeks up to 61 days in premises which are meant to hold detainees for only a few days also amounts to inhuman and degrading treatment.

69. At all stages of the criminal justice cycle corruption is involved, all too often accompanied by discriminatory practices. Corruption in prisons, practised by officials and prisoners, frequently with the consent of the prison authorities, leads to unequal access to essential goods and constitutes a violation of international norms.

70. The Special Rapporteur is very concerned that minors and children are at greater risk of corporal punishment and ill-treatment than adults in situations where they are deprived of their liberty. He is also concerned about the absence of a specialized juvenile justice system.

71. The Special Rapporteur has found that impunity with regard to perpetrators of torture and ill-treatment in past conflicts is almost total. This situation applies both to the present situation and the systematic practice of

torture under the Suharto regime in the past. In particular, lack of accountability is of concern with regard to all acts of political violence committed over the years, starting from 1965, including in relation to conflicts such as in East Timor, Aceh and others, where torture and acts of violence were widely used. Bringing perpetrators of torture and ill-treatment to justice for the serious crimes they have committed is the strongest signal that torture and ill-treatment is absolutely unacceptable.

## **Recommendations**

72. In the spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with the assistance of the international community (i.e. the United Nations and other actors), take decisive steps to implement the following recommendations:

### **Impunity**

73. Torture should be defined and criminalized as a matter of priority and as a concrete demonstration of Indonesia's commitment to combat the problem, in accordance with articles 1 and 4 of the Convention against Torture, with penalties commensurate with the gravity of torture.

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

75. The Government should ensure that corporal punishment, independently of the physical suffering it causes, is explicitly criminalized in all parts of the country.

76. Officials at the highest level should condemn torture and announce a zero-tolerance policy vis-à-vis any ill-treatment by State officials. The Government should adopt an anti-torture action plan which foresees awareness-raising programmes and training for all stakeholders, including the National Human Rights Commission and civil society representatives, in order to lead them to live up to their human rights obligations and fulfil their specific task in the fight against torture.

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

### **Safeguards and prevention**

78. As a matter of urgent priority, the period of police custody should be reduced to a time limit in line with international standards (maximum of 48 hours); after this period the detainees should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.

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

80. Judges and prosecutors should routinely ask persons arriving from police custody how they have been treated, and if they suspect that they have been subjected to ill-treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant.

81. The maintenance of custody registers should be scrupulously ensured.

82. Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present.

83. Accessible and effective complaints mechanisms should be established. These should be accessible from all over the country and from all places of detention; complaints by detainees should be followed up by independent and thorough investigations, and complainants must be protected against any reprisals. The agencies in charge of conducting investigations, inter alia Proham, should receive targeted training.

84. The Government of Indonesia should expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention.

85. The Government of Indonesia should support the National Commission on Human Rights and the National Commission on Violence against Women in their endeavours to become effective players in the fight against torture and provide them with the necessary resources and training to ensure their effective functioning.

#### Excessive violence

86. The Special Rapporteur recalls that excessive violence during military and police actions can amount to cruel, inhuman or degrading treatment. The Government of Indonesia should take all steps necessary to stop the use of excessive violence during police and military operations, above all in conflict areas such as Papua and Central Sulawesi.

#### Conditions of detention

87. The Government of Indonesia should continue efforts to improve detention conditions, in particular with a view to providing health care, treat rather than punish persons with mental disabilities, and improve the quantity and quality of food. The Government, in all detention contexts, should ensure the separation of minors from adults and of pre-trial prisoners from convicts and train and deploy female personnel to women's sections of prisons and custody facilities.

88. The Government of Indonesia should ensure that the criminal justice system is non-discriminatory at every stage, combat corruption, which disproportionately affects the poor, the vulnerable and minorities, and take effective measures against corruption by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel.

#### Death penalty

89. The death penalty should be abolished. While it is still applied, the secrecy surrounding the death penalty and executions should stop immediately.

#### Children

90. The age of criminal responsibility should be raised as a matter of priority. Through further reform of the juvenile justice system, Indonesia should take immediate measures to ensure that deprivation of liberty of minors is used only as a last resort and for the shortest possible period of time and in appropriate conditions. Children in detention should be strictly separated from adults.

## Women

91. In consultation with the Commission on Violence against Women, the Government should establish effective mechanisms to enforce the prohibition of violence against women, including in the family and wider community, above all through further awareness-raising within the law-enforcement organs.

### **Recommendation to the international community**

92. The Special Rapporteur requests the international community to support the efforts of Indonesia in reforming its criminal law system. In particular, all measures to establish well-resourced and independent national preventive mechanisms in compliance with international standards that cover the entire territory of Indonesia should be treated as a priority and supported with generous financial assistance

## Latvia

### Introduction

During the period under review, the Special Rapporteur on racism visited Latvia from 16 to 28 September 2007 (please refer to document A/HRC/7/19/Add.3).

### Recommendations (A/HRC/7/19/Add.3, paras. 81-95)

81. State authorities in the executive, legislative and judiciary branches should highlight their strong political will and commitment to fighting all forms of racism and discrimination in Latvian society and their vigilance as to the new challenges that arise from growing migration, multiculturalism and identity changes. It is especially important to firmly condemn any racist or xenophobic action or discourse, including by political parties and the media.

82. Latvia has a strong heritage of tolerance and multiculturalism that originated in its strategic position of the trade route in the Middle Ages, bringing many different ethnic groups together. State authorities and civil society should build on these pluralistic traditions to strengthen all actions against racism and discrimination and to promote a democratic multiculturalism that will be central to including new minorities in Latvian society.

83. Insofar as Latvia's legal framework is concerned, to fight racism and discrimination, despite the existence of separate provisions in various different laws, the Special Rapporteur recommends that the Government adopt comprehensive national legislation dealing with all forms of discrimination in a readily identifiable legal act. This would complement the relevant legislative basis that already exists in Latvia and, most importantly, ensure that no protection gaps remain.

84. In order to deter and punish hate crimes, particularly racially, ethnically and religiously motivated crimes, the Government should also adopt complementary legislation that unambiguously specifies criminal liability for all types of hate crimes, building on the recent amendment to the Criminal Code that considers racism an aggravating circumstance. However, apart from legislative changes, training programmes for law enforcement agencies and prosecutors to improve the implementation of this legislation are required, including the drafting of clear guidelines for the investigation and prosecution of hate crimes. Additionally, the Government should systematically collect data on hate crimes and make them publicly available, allowing for monitoring by civil society and international instruments.

85. The Government should develop best practices and general guidelines for the prosecution of cases of incitement to racial hatred, developing clear criteria for the threshold of evidence that is required to be presented and for the investigative conduct of law enforcement bodies. Whilst developing these guidelines, the Government should bear in mind the need for the prohibition of incitement to racial, religious or ethnic hatred established by section 78 of the Criminal Code, article 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Discrimination.

86. The Government should also strengthen the capacity of the Office of the Ombudsman to thoroughly investigate and act on allegations of racist crimes and incitement to racial, ethnic or religious hatred. In particular, the anti-discrimination unit of the Office, which currently employs four officials, should be significantly strengthened and enlarged.

87. To complement the role of the Ombudsman and to ensure that no protection gaps remain, the Special Rapporteur recommends that the Government put in place an independent institution that will link the fight

against all forms of discrimination to the active promotion of multiculturalism as the long-term solution to this problem.

88. Insofar as citizenship regulations are concerned, the Government should revisit the existing requirements for naturalization with the objective of facilitating the granting of citizenship to non-citizens and implementing the commitments established by the 1961 Convention on the Reduction of Statelessness. In particular, the Government should consider appropriate measures to tackle the problem of the low level of registration as citizens of children born in Latvia after 21 August 1991 to non-citizen parents. These measures could include granting automatic citizenship at birth, without a requirement of registration by the parents, to those children born to non-citizen parents who do not acquire any other nationality. The Government should also relax naturalization requirements, in particular language proficiency exams, for elderly persons. Additionally, the granting of voting rights in local elections for non-citizens who are long-term residents of Latvia should be considered by the Government and the subject of broad discussion within Latvian society.

89. The Special Rapporteur recommends that Latvia's language policy be revisited, aiming to better reflect the multilingual character of its society. This process should aim to promote the cohabitation of all the communities in Latvia on the basis of two principles: first, the legitimate right of the Latvian Government to disseminate Latvian language among all residents; second, the respect for the existence of minority languages spoken by sizeable communities, in particular Russian, in full compliance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular, article 2.1 which states that "Persons belonging to national ... minorities have the right to ... use their own language, in private and in public, freely and without interference or any form of discrimination"; article 4.2 which states that "States shall take measures where required to create favourable conditions to enable persons belonging to minorities to [...] develop their culture, language, religion, traditions and customs" and article 4.3 which states that "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue." Specific measures that could be taken to improve the situation of linguistic minorities include extending free-of-charge Latvian language courses for all residents in Latvian territory.

90. The role of the Special Assignment Minister for Social Integration and his Secretariat should be strengthened, both in terms of mandate and resources. Transforming the Secretariat into a fully-fledged Ministry would not only enhance its effectiveness and voice, but symbolically reflect the will of the Government to tackle the issues of racism and discrimination and promote integration. The Secretariat should expand its activities to promote the cultural expressions of minority communities based on its distinctive vision of multicultural integration. Besides working with traditional minorities, the Secretariat should be given the capacity to focus also on the integration of new religious and ethnic communities.

91. Particular attention should be granted to the vulnerable situation of the Roma community. The Government should reinforce its National Action Plan "Roma in Latvia 2007-2009", aiming at both promoting and respecting their cultural identity and living cultural expressions and at eradicating the deep cultural stigma affecting the community, their social and economic marginalization, particularly the poor educational attainment of Roma children and the drastically high unemployment rates among Roma citizens. The programme should also have a strong component that focuses on sensitizing society at large to Roma history and traditions, including their fate during the Holocaust, in order to eliminate the negative stigma and stereotypes constantly associated with the Roma.

92. The Government should develop mandatory training schemes for all law enforcement officials, including border guards, focusing on human rights education in general and racism and discrimination in particular. Achieving a multicultural composition and training of these officials will in the medium-term improve their relations with, and increase respect for, minority communities. Additionally, adequate mechanisms should be put in place to identify and punish unprofessional behaviour of law enforcement officials when dealing with minorities, in particular in cases of harassment and racial, ethnic or religious profiling.

93. The Government should promote a profound process of multiculturalism in Latvian society, based both on the recognition and the respect of the cultural and religious diversity of its different communities, old and recent, and the strengthening of the unity of the nation. Education, in particular the writing and teaching of history, based on this dialectical approach should play a key role in this long-term process.

94. The Government should strengthen its cooperation with civil society, which has been playing an important monitoring role for human rights violations and legislative developments in the realm of racism and discrimination. Civil society should be encouraged to further its work in providing legal counsel to victims, as well as access to international instruments, both at the international and regional levels.

95. In parallel with a political and legal strategy, the Government, in cooperation with civil society, should adopt an ethical and cultural strategy that addresses the deepest roots of racism, xenophobia and intolerance and is built around the promotion of reciprocal knowledge of cultures and values, interaction among the different communities and the link between the fight against racism, xenophobia and discrimination and the long-term construction of a democratic, egalitarian and interactive multicultural society.

## Liberia

### Introduction

During the period under review, the Independent Expert on the situation of human rights in Liberia visited the country from 16 to 30 September 2007 (please refer to document A/HRC/7/67).

### Conclusions (A/HRC/7/67, par. 71-73)

71. Though Liberia faces serious challenges in rebuilding its economy and society, the Government has made noteworthy progress in improving the human rights situation of its citizens. Initiatives launched by the Government, including the promotion of law reform and support for poverty reduction schemes targeting vulnerable groups in the population, demonstrate a commitment to ensure that all Liberians have access to justice and are able to enjoy their basic human rights, including the right to life, the right to health and the right to education.

72. For this potential to be realized, however, a number of issues will have to be addressed. Gaps in capacities and resources threaten the ability of the health and education systems to provide essential services to the population as a whole and to certain vulnerable groups in particular. As a result, social problems such as high rates of illiteracy, infant mortality and HIV/AIDS cannot be adequately addressed. Lack of capacity and poor organization have undermined the ability of the justice system to combat gender-based violence and other human rights violations. Delays in establishing the Independent Human Rights Commission and a law reform commission jeopardize the credibility of the Government in human rights protection and law reform as well as the progress it has made in these critical areas.

73. Owing to the close relationship between poverty in all its forms, human rights violations and conflict, the stakes in resolving the above-mentioned problems are high. The recent past of Liberia has clearly shown the tragic consequences that can result from neglecting political, civil, economic, social and cultural rights.

### Recommendations (A/HRC/7/67, par. 74-80)

74. To reinforce the progress made in Liberia in improving its human rights situation, the independent expert makes the recommendations as set out below.

75. The independent expert calls on the Government of Liberia:

- To urgently take steps to ensure that domestic laws are harmonized with the international human rights treaties it has ratified;
- To take action to establish an effective and accountable Independent National Commission on Human Rights;
- To act to remove any form of legal basis for harmful traditional practices, such as tried by ordeal, and take a strong and consistent stance against those practices;
- To issue regulations prohibiting courts from allowing out-of-court settlement in rape cases;
- To provide training on gender sensitivity for judges and judiciary staff;
- To work with the international community to ensure that shortfalls in the delivery of health services resulting from the gradual withdrawal of international humanitarian non-governmental organizations from certain areas can be bridged;
- To consider implementing a quota system to both secondary schools and universities to ensure that the wide disparities between the educational achievement of male and female students in certain regions can be reduced;
- To consider opening schools for pregnant girls to ensure that such girls have equal access to education;



- To consider extending the mandate of the Truth and Reconciliation Commission to allow it to complete its work.
76. The independent expert calls on the international community:
- To support the establishment of a functioning statutory legal system by promoting the development of local capacities;
  - To cooperate with the Ministry of Planning and Economic Affairs and the Ministry of Finance to create a mechanism to ensure that all interventions and expenditure from donors for public sector projects are equitably distributed among all counties.
77. The independent expert invites donor countries:
- To respect their commitment to the Paris Declaration by aligning the provision of aid more closely to the priorities set by the Government, by assisting the Government to strengthen its capacities and by eliminating duplication of effort among each other;
  - To provide firmer commitments on the amount and timing of aid.
78. Furthermore, the independent expert calls on the United Nations Mission in Liberia:
- To assist in developing the capacity of civil society in Liberia to provide constructive inputs into policymaking processes at the national and sub national levels;
  - To assist the Government in evaluating the results of the pilot project to incorporate stronger human rights commitments into concession agreements with rubber plantations and extractive industries and to support the Government in developing model agreements based on that project.
79. The independent expert invites the United Nations country team to collaborate to create shelters for victims of gender-based violence.
80. The independent expert calls on the Office of the United Nations High Commissioner for Human Rights:
- To provide more training materials on human rights to the Human Rights Unit of the Ministry of Justice;
  - Alongside the African Union, the Economic Community of West African States, the European Union, United Nations agencies and UNMIL, to collaborate with the Government and all stakeholders to provide training and possibilities for exchanging experience to police and judiciary staff to strengthen their work from a human rights perspective at the regional level.

## Lithuania

### Introduction

During the period under review, the Special Rapporteur on racism visited Lithuania from 16 to 28 September 2007 (please refer to document A/HRC/7/19/Add.4).

### Recommendations (A/HRC/7/19/Add.4, paras. 81-93)

81. State authorities in the executive, legislative and judiciary powers should highlight their strong political will and commitment to fight all forms of racism, racial discrimination and xenophobia in Lithuanian society and their vigilance about new challenges that arise from growing migration, multiculturalism and identity changes. It is especially important to firmly condemn any racist or xenophobic action or discourse, including by political parties and the media.

82. Lithuania has a strong heritage of multiculturalism that stems from the multi-ethnic Grand Duchy of Lithuania and continues to exist today. State authorities and civil society alike should build on these plural traditions to strengthen all actions against racism and discrimination and to promote a democratic multiculturalism that includes new minorities into Lithuanian society.

83. The Government should take steps to complement the existing legal framework with measures that would fill the protection gaps that still exist. In particular, the Criminal Code should be amended to introduce a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance, allowing for a more severe punishment for perpetrators of these acts.

84. The Government should also strengthen the capacity of the Office of the Ombudsperson on Equal Opportunities to thoroughly investigate and act on allegations of racist crimes, incitement to racial hatred and all forms of racial and ethnic discrimination.

85. The Government should develop best practices and general guidelines for the prosecution of cases of incitement to racial hatred, developing clear criteria for the threshold of evidence that is required to be presented and for the investigative conduct of law enforcement conditions. Whilst developing these guidelines, the Special Rapporteur recommends that the Government fully apply the prohibition to incite racial, religious or ethnic hatred established by article 25 of the Constitution, article 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.

86. As already pledged by a number of State authorities, including in the discussions of the Committee on the Elimination of Racial Discrimination, Lithuania should proceed to make the voluntary declaration under article 14 of the Convention to recognize the competence of that Committee (CERD) to receive and consider individual communications of violations within its jurisdiction.

87. The Government should also develop comprehensive programmes of multicultural training and qualification in public institutions, particularly for law enforcement officials.

88. The role of the Department of National Minorities and Lithuanians Living Abroad should be strengthened, both in terms of mandate and resources. The Department should expand its activities to promote cultural expressions of minority communities and rely on its distinctive vision of multicultural integration. In particular, besides working with traditional minorities, the department should be given the capacity to have a more specific focus on new religious and ethnic communities and their integration into Lithuanian society.

89. As an integral part of the focus on new minorities, the Government should engage in efforts to prevent the emergence of Islam phobia as well as discrimination and prejudice against other religions, particularly those that were not historically present in Lithuania.

90. The Government should extend and reinforce its National Programme for the Integration of Roma in the Lithuanian Society, aiming at both promoting and respecting their cultural identity and at eradicating their social and economic marginalization, in particular poor housing conditions, the high level of dropouts and poor attainment of Roma children at school and the difficulties of Roma to access employment. The Programme should also have a strong component that focuses on non-Roma citizens, sensitizing Lithuanian society at large to Roma history and traditions, in order to eliminate the negative stigma and stereotypes with which Roma are recurrently associated. Furthermore, as many of the actions that are required to improve the living conditions in Roma settlements need to take place at the municipal level, Vilnius authorities should work in close collaboration with the national Government to follow its overarching priorities and legal obligations to grant the full enjoyment of economic, social and cultural rights to the Roma community.

91. In parallel with a political and legal strategy, the Government and civil society should adopt an intellectual, ethical and cultural strategy that addresses the deepest roots of racism, xenophobia and intolerance and is built around the promotion of reciprocal knowledge of cultures and values, the interaction among the different communities and the link between the fight against racism, xenophobia and discrimination and the long-term construction of a democratic, equalitarian and interactive multicultural society.

92. The process of building a multicultural society in Lithuania should be based on two principles: respect for the historical truth and non-discrimination against minorities. Due to historical and geographical factors, a focus on national and regional dynamics is also central. The success of this initiative will also depend on the active involvement and participation of minorities in the construction of a new multicultural nation that is fully respected by all countries in the region.

93. Civil society in Lithuania should further strengthen and reinforce its monitoring role for human rights violations, particularly in the realm of racism and discrimination. In particular, NGOs or alliances of NGOs should strive to offer potential victims with legal counsel and access to international instruments, both at the international and regional levels. This includes developing closer communication channels with treaty bodies, especially the Committee on the Elimination of Racial Discrimination, and special procedures, to bring to these mechanisms' attention allegations of violations taking place in the country.

## **Macedonia (The former Yugoslav Republic of)**

### **Introduction**

During the period under review, the Special Representative of the Secretary-General on the situation of human rights defenders visited the former Yugoslav Republic of Macedonia from 23 to 25 September 2007 (please refer to document A/HRC/7/28/Add.4).

### **Conclusions and recommendations** (A/HRC/7/28/Add.4, paras. 90-104)

90. The Special Representative recognizes a considerable number of positive developments since her first visit. The most remarkable is the increased capacity and professionalism of human rights defenders, although human rights organizations still do not form a community in a position to protect defenders.

91. Another area of major progress has been in legislation, with the adoption of several laws relevant to the work of human rights defenders, including the law strengthening the inspection functions of the Ombudsperson; the law on free access to public information; the abolition of prison sentences for the offence of defamation; the law on an independent court budget, among others.

92. While progress can be registered on the adoption of new laws, the implementation of these laws is often not satisfactory. Enforcing and monitoring mechanisms that defenders can use to report cases of non-compliance and protect affected victims are still lacking, are insufficient or do not function properly. This has created an environment in which Government responsiveness is limited or absent.

93. The Special Representative recognizes that the international community has played an important role in strengthening human rights defenders in the country, both in funding their projects and in building their capacity. The lobbying and advocacy efforts of human rights defenders have often been more successful when backed by international organizations. The current trend of reducing funds for civil society organizations is a concern. The Special Representative firmly believes that support to civil society organizations by foreign donors is essential even if the Government's capacity to extend grants to NGOs is increased.

### **Recommendations for the consideration of the Government**

94. Institutionalize interaction and consultation processes with civil society in drafting legislation and policies, in reporting to international human rights mechanisms, and in other relevant areas of Government action. The Strategy for Government Cooperation with the Civil Society Sector can provide an appropriate framework for such cooperation provided its application is extended to local authorities and the Parliament.

95. Establish enforcement and monitoring mechanisms that defenders can use to report non-compliance with legislation and human rights abuses. Among those mechanisms, an external oversight mechanism to investigate abuses committed by the police should be established and the Commission in charge of monitoring the implementation of the law on access to information should be reinvigorated. Ensure that complaints on abuses committed by the Alfi Unit of the police can be independently investigated, including by the Ombudsman. Monitoring mechanisms should be established and accessible at the local level.

96. Remove the legal and administrative constraints that prevent human rights defenders from accessing detention centres and police stations and ensure that such access is given.

97. Ensure tax exemption for voluntary organizations and expedite the legal and procedural requirements for this purpose.

98. Take the appropriate measures to ensure that freedom of association of trade unions in the private sector is respected, so that activities for the promotion of labour rights are protected.

#### Recommendations for the consideration of human rights defenders

99. Develop and strengthen initiatives aimed at forming a human rights community able to voice the positions of human rights defenders more forcefully and act as a protection network for defenders.

100. Improve strategies to work with the media to increase media understanding of and reporting on human rights and the work of defenders.

101. Consider the implementation and strengthening of measures aimed at improving the transparency and accountability of civil society organizations in order to build public confidence and to ensure that the human rights agenda remains relevant to the problems faced by the population.

102. Strengthen human rights work with a multi-ethnic dimension. This will contribute to overcoming deeply rooted discriminatory practices along ethnic lines and will strengthen the reconciliation process.

#### Recommendations to the international community

103. Accompany the transition process until the end and continue supporting human rights defenders, both in terms of funding and capacity-building. This should be done while respecting the independence of defenders in determining their priorities and strategies and preserving their role of monitoring State institutions.

104. In assessing the country's compliance with human rights requirements, such as those needed to access the EU, use indicators that go beyond superficial changes. For instance, in the case of legislation, it is not enough to just adopt laws more conducive to the work of human rights defenders, but also to demonstrate effective implementation.

## Mexico

### Introduction

During the period under review, the Special Rapporteur on the sale of children, child prostitution and child pornography visited Mexico from 4 to 14 May 2007 (please refer to document A/HRC/7/8/Add.2).

### Conclusions (A/HRC/7/8/Add.2, paras. 70-78)

70. Mexico has made great strides in recent years in the protection of the human rights of children through its ratification of international conventions and protocols that have not only been incorporated into domestic legislation but which also serve as models for amending and updating national legislation and relevant social policies. The Mexican Government's openness to international scrutiny is also noteworthy; Mexico assumes that the protection of human rights is binding on the entire international community and not only on national States.

71. A very positive development has been the process of adopting a law against trafficking in persons, and the drafting of the National Human Rights Plan is to be commended. Another welcome development is the growing and positive trend on the part of civil society to call for a rights-based modernization of legislation in all States, which means that human rights must no longer be conceived as values guaranteed only by the State, but as a challenge for the entire community.

72. Nevertheless, the system of protection is still too centralized in the State, which prevents many social networks from reaching populations in need of their assistance, particularly in border areas, tourist destinations and large cities, to combat the sexual exploitation of children. Relations between the State and civil society are still not strong enough to combat child sexual exploitation, and opportunities for cooperation, in which the public sector could benefit from the dynamism and creativity of civil society in order to get to the root causes of poverty and violence, are therefore lost.

73. There is no effective system to protect and provide assistance to children and young people who have been victims of the offences of sexual exploitation or any form of trafficking. Social rehabilitation or reintegration programmes are practically non-existent. This lack of assistance by the State or non-governmental sectors to child victims of sexual exploitation and trafficking is one of the causes of revictimization. There are not enough of these programmes to address the current situation; the programmes that exist are intended for victims of domestic violence which, although they have a number of similar points, are not sufficiently specialized to provide assistance in treating serious psychological, physical and emotional damage. This can make victims of sexual exploitation and trafficking very vulnerable to the same or new networks of exploiters and traffickers, who are aware of their weaknesses. A new generation of public policies for children, capable of halting the increase in the trafficking of minors and the sexual exploitation of children and adolescents has yet to be developed.

74. The educational system is neither technically nor administratively prepared to receive reports of abuse, exploitation and trafficking from its students. Bearing in mind that the educational system is well established throughout the country, an opportunity is being lost to make it the first barrier for preventing violations of the human rights of children and young people, although the activities of the National Human Rights Commission and its programme of child promoters of human rights in schools should be mentioned.

75. The sexual exploitation of and trafficking in children, particularly in border areas, tourist destinations and large cities can become an uncontrollable pandemic unless intensive and profound efforts are made to amend social policies on children in order to reach critical areas before situations of exploitation and abuse are established with impunity.

76. Far from being a home-grown or spontaneous phenomenon committed by isolated offenders, the sexual exploitation of children and young people is related to various forms of organized crime and clandestine circuits of the sex trade, where the vast amount of money generated by such activities, and corrupt connections with various bodies in the State sector, facilitate exploitation and frequently make it impossible to prosecute the perpetrators.

77. Although specific situations can vary in each State, city and locality, in accordance with the personal and professional characteristics of the staff involved, the testimonies gathered overwhelmingly point to corruption and police negligence as one of the main causes of exploitation and trafficking. Inefficiency, poor training, corruption and the lack of adequate protocols and monitoring regulations, endemic in various police and municipal agencies responsible for ensuring that no minors are exploited in the so-called “sex trade”, is conducive to the activities of speculators and opportunists who wish to offer their “clients” adolescents and children.

78. Lastly, the social situations in the country’s northern border region pose an extremely high risk for children and adolescents. Traffickers, smugglers and *polleros* (or *coyotes*, - smugglers of illegal immigrants) take minors across the border, sometimes in order to reunite them with family members who have emigrated and sometimes to hand them over to exploiters. In this regard, cases of children who, having illegally entered Mexican territory, have been deported, have not been sufficiently studied. Many of these children are in need of international protection, since they are fleeing not only poverty but also *maras* (juvenile gangs), criminal groups, violence and abandonment by their families and society. They are returned to countries that lack adequate protection networks and where due attention is not given to their future reintegration; this exposes them to new risks of trafficking and exploitation.

### **Recommendations** (A/HRC/7/8/Add.2, paras. 79-83)

79. In the light of the foregoing, the Special Rapporteur wishes to make the following requests, comments and proposals:

- (a) The Special Rapporteur urges political actors to ensure that the protection of children and, in particular, efforts to prevent the sexual exploitation of children and adolescents, is a national priority supported by all political sectors, in which everyone has something to contribute, from the most distinguished leaders to the most humble citizens, to save future generations from this scourge besetting the country;
- (b) Of the 31 Mexican States, only three punish child prostitution as a serious offence. All Mexican States must punish child prostitution as a serious offence, just as sex crimes are qualified as serious offences in the legislation of the various Mexican States, with a view to ensuring genuine protection of children’s rights;
- (c) There have been repeated calls for procurators’ offices to respond more quickly to reports that they receive, in order to take action to protect potential victims. The various procurators’ offices require additional technological resources, better training, better contact with their counterparts in other parts of the world and closer ties with society so that they have greater support for combating the offence more effectively;
- (d) The fight against organized crime is already a priority for the Mexican judicial, tax and police authorities. Efforts to prevent the sexual exploitation of children and young people, who are easy victims of unscrupulous persons involved in other criminal activities, such as drug trafficking and smuggling, should also become a priority;
- (e) Owing to people’s fear of lodging a complaint, the State’s credibility has been weakened. In order to strengthen it, the Special Rapporteur recommends such steps as establishing a witness protection system in cases of trafficking and smuggling in order to encourage citizens to lodge complaints and not to resign themselves to what they consider to be inefficiency, corruption or passivity on the part of public institutions;
- (f) The police require better training about victims of trafficking, smuggling, domestic violence and sexual abuse. The Cybernetic Police also needs more support and resources in order to ensure that the positive actions that are currently being taken can be expanded to address more demanding criminal realities. To this end, cooperation with other countries is essential;

(g) The Special Rapporteur considers it necessary for the State to maintain its lead role in the area of policies on children; the State should also carry out a vigorous decentralization exercise and transfer resources to organized civil society in order to enable it to reach places that are inaccessible to the State.

80. The existing policies are not sufficient for creating a new and genuine protection system. In order to achieve this, the Special Rapporteur recommends:

(a) The initiation of a national dialogue, in which the State and NGOs can draw up a plan of action for the next 15 years, with shared responsibilities, common goals and innovative policies. Civil society is of key importance for strengthening the democratic process and combating the sexual exploitation of and trafficking in children, and its social interventions should be encouraged, not hindered;

(b) The creation of a high-level national council on children that reflects the diverse proposals of civil society and State programmes and which can formulate ways of developing a new model for providing minors with comprehensive protection and assistance. He also recommends the creation of an ombudsman for children in order to facilitate the decision-making process and the formulation of new policies that have been delayed for too long;

(c) There is currently no rapid response mechanism for cases of disappearances of minors. The Special Rapporteur proposes the creation of a focal point for receiving information and coordinating an emergency search system;

(d) The Special Rapporteur notes the establishment of a free telephone hotline in the Federal District to receive all types of complaints from minors. It would be very useful to have a free national hotline accessible in all parts of the country to enable people to report cases of trafficking in minors or disappeared persons, and to assist minors in complete confidentiality. He also recommends that the hotline operate 24 hours a day in order to be able to receive emergency calls;

(e) The Special Rapporteur recommends the establishment of special centres that are fully equipped to provide emergency assistance to minors who have been victims of child commercial sexual exploitation. The existence of various civil society programmes with different technical expertise and with diverse proposals would be useful in order to have a wide range of possibilities and strategies;

(f) The Special Rapporteur recommends the strengthening of relations with the International Labour Organization and, specifically, the International Programme on the Elimination of Child Labour (IPEC), which continues to form institutional alliances that define measures to combat child labour, encourages the development of national policies, promotes protective legislation and works to strengthen existing organizations;

(g) The Special Rapporteur recommends that special emphasis be placed on responsible tourism. He recommends that Mexico sign the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, which is designed to establish the ethical norms to be followed by the tourist industry, thereby creating a shared social responsibility that respects and protects children's rights. The Special Rapporteur also recommends more active cooperation between the Government of Mexico and national and foreign tourist industries with a view to improving the protection of children from these crimes. In addition, the various governments of the Federation should take care when they establish guidelines to be followed in their tourism policies in order to prevent - as has already occurred in the past - the State from encouraging investments that are linked to networks that exploit minors.

81. The Special Rapporteur expresses concern at the lack of complete, credible and consistent information concerning the series of offences committed against minors in connection with prostitution and child pornography that have occurred in recent years in Ciudad Juárez. The Special Rapporteur recommends the establishment of a truth and prevention commission in that city, composed of government representatives and representatives of victims' families, humanitarian organizations and eminent persons of the city, which would have the objective of compiling all available information and making proposals concerning social prevention in order to avoid the recurrence of such offences. This group could proceed to the creation of "a book of hope and never again", in which cases could be registered and the community could express its commitment to forms of coexistence in security and development that would help to prevent these unpunished forms of



violence. The Special Rapporteur also recommends the erection of a monument or memorial in honour of the victims, which should be placed in a central area in order to demonstrate civilians' commitment to peaceful coexistence and respect for human rights.

82. Child commercial sexual exploitation is still a subject that has received little attention from researchers, in spite of the interesting works that the Special Rapporteur found at the University of Guadalajara. The Special Rapporteur urges the Mexican academic community, which is intellectually rich and innovative in many areas, to make an in-depth study of subjects relating to the protection of minors.

83. It often happens that members of a minor's immediate family live in the United States of America, while members of the minor's non-immediate family - for example, distant aunts and uncles or cousins - live in Mexico. This leads to a situation in which minors who have been deported back to Mexico often find it difficult to face the trauma of having been deported and having to leave their nuclear family in the neighbouring country; this leads to very traumatic situations of separation. The Special Rapporteur recommends the conclusion of a bilateral agreement that would grant such children amnesty and enable them to return to the United States to be with their immediate family.

## Morocco

### Introduction

During the period under review, the Special Rapporteur on the right to education visited Morocco from 27 November to 5 December 2006 (please refer to document)

Conclusions and recommendations (A/HRC/8/10/Add.2, par. 71-74).

71. The progress that Morocco has made in the education sector in recent decades attests to its growing commitment to human rights and the political will of the State and society. It has not benefited all sectors of the population, however, despite the strengthening of the legislative framework for protection over the years and the increase in the education budget.

72. This situation clearly shows how important it is to ground public policies firmly in human rights so as to redress social imbalances and disparities in the enjoyment and exercise of rights by means of positive action to meet the needs of the most disadvantaged social groups.

73. Despite this significant progress, the Special Rapporteur concludes that Morocco has a considerable way to go before it can guarantee all its inhabitants the effective enjoyment of the right to education. He considers that the main challenges facing Morocco in order to realize the right to education are the following:

(a) To apply the National Education and Training Charter and other legal instruments, including the Convention on the Rights of the Child, and to pursue public policies on education coverage and quality;

(b) To take bold and speedy action to bring broad sectors of the child population into formal and non-formal education, above all disabled children, particularly in rural areas, street children and working children. The Special Rapporteur has observed that these children have benefited less than others from the advance towards universal compulsory primary education. In Morocco, approximately 7 per cent of children, in other words 1.5 million children, do not attend school;

(c) To reduce the high school-dropout rate, which official figures put at 4 out of 10 children in compulsory primary education, 5 out of 10 in urban secondary education and 8 out of 10 in rural secondary education;

(d) To extend the coverage of literacy programs and broaden their content beyond simply learning to read and write;

(e) To make up for lost time in achieving the objectives set in the National Education and Training Charter with regard to the teaching of the Amazigh language and culture and introduce Amazigh gradually in schools countrywide;

(f) To make human rights a real part of school life and one of the basic principles of education, as recommended in the National Education and Training Charter, and end corporal punishment in schools;

(g) To set up as soon as possible the national and regional commissions to monitor and evaluate measures adopted under the national human rights education program so as to ensure that content is geared to meet the needs of national communities and is based on international human rights instruments;

(h) To strengthen the gender perspective in the education system and the principle of gender equality so as to do away with the current mindset that seeks merely to achieve gender parity in access to education and eliminate sexist stereotypes from textbooks.

74. In addition, the Special Rapporteur recommends that the Moroccan Government should:

(a) Urgently collect detailed information on the situation of street children and identify practical measures to ensure their inclusion in the education system;

(b) Follow the recommendations of the Children's Parliament and take account of its comments and proposals when devising national and regional education policies;

(c) Broaden the mandate of the Ombudsman's Office (Diwan al-Madhalim) so that it can act *ex officio* to promote the realization of economic, social and cultural rights, including the right to education;

(d) Establish an inter-agency team to devise and take the necessary steps to introduce school canteens nationwide within a reasonable time frame;

- (e) Assess the coverage and scope of family allowance schemes with a view to reforming them as required in the very near future to ensure that schooling does not constitute an economic burden for families;
- (f) Reinforce the supervision of schools so that the responsible officials can check that the National Education and Training Charter and the various national and international human rights protection instruments are being properly applied. For this purpose, the requisite specialist training should be encouraged;
- (g) Bring human rights education activities into line with the World Program for Human Rights Education adopted by the United Nations General Assembly and the plan of action for its first phase;
- (h) Establish a system of legal protection against sexual harassment and sexual abuse for girls and young women;
- (i) With a view to promoting girls' education, devise and establish a system of indicators showing the consequences of domestic labour for girls;
- (j) Draw up a suitable plan for training teachers to teach Amazigh, one that, in the short term, extends the length of training (currently between 3 and 15 days), in particular for teachers whose mother tongue is not Amazigh, and, in the longer term, sets the same standards of university training for the teaching of Amazigh as for other languages such as Arabic, French or English;
- (k) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol and adopt a transition plan towards an inclusive education system;
- (l) Allocate funds to provide, or grants to purchase, wheelchairs, artificial limbs and other means of enabling disadvantaged children and adolescents - male and female - to go to school;
- (m) Establish a network of centers and shelters for rural girls who are the victims of violence;
- (n) Work for an amendment to the law to enable children - male and female - to enroll in the education system even without parental consent;
- (o) Develop disaggregated indicators on the school dropout rate and absenteeism by sex, social situation, ethnic origin and other variables, not only to help curb these problems but also to ensure that all schoolchildren complete their education, regardless of their sex.

## Myanmar

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights in Myanmar visited the country from 11 to 15 November 2007 (please refer to document A/HRC/7/18 and A/HRC/7/24).

### Concluding remarks (A/HRC/7/18, paras. 88-98)

88. The human rights concerns enumerated in the present report are largely the same as those highlighted by the Special Rapporteur in his reports since 2001. It should be noted that the crackdown of the demonstrations of August and September 2007, the increased army deployment in certain ethnic areas and the implementation of major development projects are also opening new fronts in the patterns of human rights abuses observed since the establishment of the mandate.

89. The Special Rapporteur deplores the fact that the apparent willingness of the Government to address these problems when the Special Rapporteur first took up his mandate seven years ago has disappeared. The recommendations formulated by the General Assembly (the latest being resolution 62/222), the Security Council, the Human Rights Council (notably resolutions S-5/1 of the special session of 2 October 2007 and 6/33), the Commission on Human Rights, the Secretary-General and his Special Adviser, the thematic special procedures mandate-holders, as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies have regrettably not been implemented.

90. The Special Rapporteur is convinced that Myanmar would benefit from more active cooperation with his mandate. He insists that, though it is his obligation to go public about allegations of human rights violations, that does not exclude a constructive and continuous dialogue with the Government. These two elements of his mandate can contribute to a new dynamic for the improvement of the situation of human rights in the country.

91. In this last opportunity to address the Council as Special Rapporteur on the situation of human rights in Myanmar, he would like to share some reflections on his experiences of the last seven years.

92. The Special Rapporteur has made every effort to convince the Government of Myanmar to work towards the protection and promotion of human rights and to fulfil its international obligation of cooperation in the field of human rights. The representatives of Myanmar, despite their urbane treatment of the Special Rapporteur, have preferred to denounce his findings as inaccurate or biased instead of investigating the allegations reported by him. Combating impunity is essential for the promotion and protection of human rights. The investigation of reported abuses and punishment of perpetrators is necessary for the restoration of democracy and the rule of law.

93. The Special Rapporteur reaffirms that he has maintained his independence, impartiality and objectivity in weighing up the information provided by various sources. He has reported in an honest manner on the progress made and obstacles faced by the Government in promoting and protecting human rights. He is distressed to conclude that the Government of Myanmar refuses to cooperate with both his mandate and the Council.

94. The Special Rapporteur warmly thanks all the Member States, United Nations Resident Coordinators and United Nations country teams, in particular his colleagues in Myanmar, international and regional organizations as well as civil society organizations and scholars who have supported his mandate.

95. It is hoped that the ASEAN human rights mechanism, if established in accordance with international standards and norms, will assist Myanmar in fulfilling its international human rights obligations.

96. The Special Rapporteur would like to reaffirm what he has previously stated to the Council: humanitarian assistance cannot be a hostage to politics. Any decision on humanitarian assistance must be guided solely by the best interests of children, women, vulnerable groups and minority communities. It would be a terrible mistake to wait for the political normalization of Myanmar to help the population and to empower communities and their representatives.

97. The Special Rapporteur would like to conclude by praising all human rights defenders inside and outside the country for their courage and commitment in the promotion and protection of the human rights of the people of Myanmar.

98. The Special Rapporteur believes it is important that Member States support effective initiatives to deal with common concerns of society in Myanmar and in the region. Joint initiatives on issues of common concern, such as the environment, economic growth and development, educational modernization, medical research and engineering and technology, which could prove to be paths to progress, should be explored. All these initiatives must have as their goal the encouragement of an effective democratic transition and the promotion of higher standards of living and the protection of human rights of the people of Myanmar.

#### **Recommendations** (A/HRC/7/18, paras. 99-100)

99. The Special Rapporteur's recommendations made in his previous reports remain valid in view of the prevailing situation in Myanmar and the non-implementation by the Government of those recommendations.

100. The Special Rapporteur calls on the Government of Myanmar:

- (a) To urgently release all political prisoners at risk, including female political prisoners and those who are elderly and ill, as a first step towards the release of all political prisoners;
- (b) To resume, without further delay, dialogue with all political actors, including NLD members and representatives of ethnic groups, with a view to having their views included in the drafting of the constitution prior to its finalization;
- (c) To take all necessary steps to secure the right to freedom of opinion and expression as well as peaceful association of all persons and to repeal and reform laws that circumscribe fundamental freedoms as part of the road map to elections;
- (d) To end the ongoing prosecution of political and human rights activists and to ensure free and fair trials in accordance with international recognized standards and the requirements of the due process of law;
- (e) To take urgent measures to eliminate discriminatory practices against ethnic groups and to ensure that no further discrimination is carried out;
- (f) To put an end to the restrictions on the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives;
- (g) To establish a mechanism at the local level to ensure coordination on cross-border health issues and to implement bilateral agreed actions;
- (h) To seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles;
- (i) To take steps to improve conditions of detention and to ensure urgent medical treatment for prisoners, and to re-engage with ICRC in providing free access to detention centres;
- (j) To authorize access to conflict-affected areas by the United Nations and associated personnel, as well as personnel of humanitarian organizations, and to guarantee their safety, security and freedom of movement;
- (k) To respect its obligations under international human rights and humanitarian law in the areas affected by armed conflict, to put an end to the recruitment of child soldiers, and to ensure the efficient work of health providers in the conflict areas, including a serious investigation of the cases of harassment and abuses against health personnel;

- (l) To follow up on the recommendations and concluding observations adopted by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child;
  - (m) To establish an effective mechanism to ensure that all officials who commit human rights abuses are subject to strict disciplinary control and punishment as an essential step to put an end to the culture of impunity that prevails throughout the country;
  - (n) To end illegal land confiscation in Myanmar and to ensure that land use and ownership issues are addressed in the constitution;
  - (o) To continue to collaborate with the Secretary-General to support the exercise of his good offices mission.
101. The Special Rapporteur calls on the international community and the United Nations:
- (a) To promote a framework of principles with respect to Myanmar in order to allow Member States to pursue a plurality of strategies and cooperation in accordance with their particular strengths and capacities;
  - (b) To build on existing programmes of humanitarian assistance and support for health, education and human rights, in particular through support to civil society development;
  - (c) To engage in a serious dialogue with the Government of Myanmar on an adequate response to the situation of conflict in eastern Myanmar.

Report submitted in accordance with the resolution 6/33 of the Human Rights Council,

**Conclusions** (A/HRC/7/24, paras. 43-46)

43. The Special Rapporteur regrets that he has not been granted access to the country for a follow-up mission as requested by the Council. He acknowledges the initial cooperation by the Government of Myanmar in November 2007 and the provision of information concerning the causes of death of 15 individuals and the detention status of a number of individuals.

44. The lack of information concerning the investigation of the events of September 2007 is a compelling example of the challenges to the promotion and protection of human rights in Myanmar. The continued denial of basic civil and political rights and the worsening living conditions of the population make a difficult human rights situation even more acute. The Government continues to restrict, among others, the right to freedom of expression and the right to peaceful assembly, thereby jeopardizing the stable basis for a solid transition to democracy.

45. The Special Rapporteur shared with the Government an updated list of 718 persons believed to be in detention as a result of the crackdown on the demonstrations held in September 2007, a list of 16 people reported killed (in addition to the list of 15 dead provided by the authorities), and a list of 75 people reported missing, for comments and updated information. He would like to draw the attention of the Council to the fact that the lists transmitted to the Government only contained those incidents where the names of the people involved are cited and that they could not be seen as exhaustive, given the current constraints to verify the allegations received in situ.

46. The Special Rapporteur would like the Council to note that the lack of access for a follow-up mission is regrettable and reflects the lack of significant steps by the Government to implement the requirements set out in Council resolution S-5/1. The Special Rapporteur, however, considers that his initial visit in November 2007 opened an opportunity for a frank dialogue with the authorities on the human rights reforms needed to ensure the democratic transition aimed for in the constitutional process. In this context, the Special Rapporteur calls on the authorities to take genuine steps to engage with the Council in a thorough investigation on the crackdown of the demonstrations and to take measures anchored in international standards, which would prevent a repetition of the tragic events of September 2007.

## **Recommendations** (A/HRC/7/24, para. 47)

47. The Special Rapporteur's recommendations made in his previous report (A/HRC/6/14) remain valid in view of the lack of information from the Government of Myanmar on the implementation of those recommendations. In the light of the objectives of his mission in November 2007 and of the recommendations already made in his previous report, the Special Rapporteur therefore calls on the Government of Myanmar to implement:

### **(i) Immediate measures**

- (a) To secure the physical and psychological integrity of all persons kept in custody;
- (b) To reveal the whereabouts of people who are still detained or missing;
- (c) To provide information to the families of the deceased regarding the cause of death and the whereabouts of their remains and to carry out a thorough investigation of the cause of death;
- (d) To bring the perpetrators of human rights violations to justice and to provide the victims and their families with effective remedies;
- (e) To ensure immediate access by ICRC and other independent humanitarian personnel to all detainees;
- (f) To release unconditionally all persons who have been taken into custody for peaceful assembly or the peaceful expression of their political beliefs;
- (g) To grant an unconditional amnesty to people who have been already sentenced, and to drop charges against those who are in the process of being prosecuted;
- (h) To conduct an independent and thorough investigation into the cases of killings, beatings, hostage-taking, torture and disappearance;
- (i) To ban militias as illegal groups, in accordance with the law of Myanmar;
- (j) To effectively engage in a constructive and sustainable dialogue with the Human Rights Council and its special procedures, especially the mandate of the Special Rapporteur on the situation of human rights in Myanmar;
- (k) To ensure a follow-up mission on the initial findings from the Special Rapporteur's mission of November 2007 and the present report through the invitation of an international commission of inquiry or fact-finding mission to investigate the September events in a more comprehensive manner;

### **(ii) Transitional measures**

- (a) To develop an effective channel for follow-up communications and cooperation with the mandate of the Special Rapporteur and provide for regular access to the country;
- (b) To consider the implementation of the plan of action for the release of all political prisoners as suggested by the Special Rapporteur in his report to the General Assembly (A/62/223);
- (c) To pursue dialogue with Daw Aung San Suu Kyi through the Minister for Labour and the Liaison Minister;
- (d) To repeal or amend existing laws and regulations in relation to the right to peaceful assembly, the right to freedom of expression, the right to freedom of movement and all matters related to criminal and penal procedures and prison regulations;
- (e) To seek technical assistance to repeal or amend the Penal Code and Code of Criminal Procedure and to review the rules that govern the policing of demonstrations.

## **A/HRC/8/12**

### **Introduction**

The present report is a follow-up report on the status of implementation of Council resolutions S-5/1 and 6/33, as requested by the Council in its resolution 7/31.

## **Conclusions**

69. According to the information received since 26 March 2008, the situation of human rights in Myanmar reported by the previous Special Rapporteur has not changed for the better. It is a great concern of the present Special Rapporteur that almost no improvement has been made and that critical issues still have to be addressed.

70. Further development of the present report will need close cooperation with the Government of Myanmar, in order to improve the enjoyment of human rights of the people of Myanmar.

71. In that regard, the Special Rapporteur regrets that, owing to time constraints and the schedule of the Council, he must submit the present report without having a chance to explore thoroughly with the Government of Myanmar areas of cooperation and exchange of information.

## **Recommendations**

72. The Special Rapporteur recommends that the Government of Myanmar:

(a) Immediate release of the General Secretary of the NLD, Aung Saan Suu Kyi, as an initial step in the reconciliation process, to be followed by the release of all other political prisoners;

(b) Set-up an effective mechanism to establish the whereabouts of those who reportedly disappeared during and after the crackdown on the peaceful demonstrations in September 2007, and provide information on the progress of its work;

(c) Guarantee the physical integrity of all political prisoners, and in particular access to medical treatment of those in need;

(d) Prepare a public report on how the referendum was conducted and the lessons learned;

(e) Fully respect freedom of expression, peaceful assembly and association, in particular at this crucial time in the establishment of the solid foundations of a healthy democracy;

(f) Continue to uphold the agreements made with the Secretary-General to allow international humanitarian workers and supplies unhindered access to the country and particularly to the areas affected by cyclone Nargis, and cooperate with the international community in monitoring questions of access and in assessing the need for effectiveness of the aid being supplied;

(g) Extend full cooperation to the mandate of the Special Rapporteur, accepting his requests for visits.



## Nigeria

### Introduction

During the period under review, the Special Rapporteur on torture visited Nigeria from 4 to 11 March 2007 (please refer to document A/HRC/7/3/Add.4).

### Conclusions (A/HRC/7/3/Add.4, paras. 63-74)

63. In Nigeria, torture and ill-treatment are widely practised in police custody; they are particularly systemic in the Criminal Investigation Departments (CID). Torture is an intrinsic part of the functioning of the police in Nigeria. This unacceptable state of affairs must end. The Government must take immediate and effective measures to ensure that this message permeates every level of every law enforcement agency in Nigeria.

64. The Special Rapporteur emphasizes that the prohibition of torture and ill-treatment is absolute. The circumstances surrounding the deaths of the two persons personally interviewed by the Special Rapporteur (see paragraphs 44-49 above) - examples of serious torture, disappearance and extrajudicial killing - illustrate and confirm the inability of the current system to effectively investigate allegations, protect victims of serious human rights violations, and bring law enforcement officials in Nigeria to account.

65. The findings of the Special Rapporteur are hardly a revelation as many credible human rights organizations, as well as United Nations human rights mechanisms, as for example the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4), have documented and concluded that torture is widespread in the country. That the conditions in detention are appalling is similarly well known.

66. It is fact that Nigerian law enforcement is seriously under-resourced and at the same time confronted with a high rate of violent crime. Consequently, adequate training is lacking, corruption is endemic, and the cadres, emboldened by a culture of impunity for torture, are prone to heavy-handed tactics in a criminal justice system which relies heavily on confessions. But the roots of the problem cut a wider swathe. The Special Rapporteur concurs fully with the analysis of the Special Rapporteur on summary, arbitrary and extrajudicial executions, who carried out a visit to the country in 2005: There is no single entry point for reformers of the dismally inadequate Nigerian criminal justice system. Virtually every component part of the system functions badly. The result is a vicious circle in which each group contributing to the problem is content to blame others. Thus for example, police officers complain about a lack of resources, but the politicians complain that the police are thugs and their performance undeserving of increased resources. The judiciary blames the prison system and the police for the scandalous number of uncompleted cases, while the police observe that arresting robbers is futile because the courts will never convict them. It is essential to understand the vicious cycle of blame and for all actors to acknowledge their own responsibilities (E/CN.4/2006/53/Add.4, para. 88).

67. The Special Rapporteur cannot emphasize enough that Nigerians themselves have exhaustively identified the nature and scale of these problems. Indeed in August 2005, President Obasanjo acknowledged the severity of the problem of torture in the country. Further, Nigerians have already come up with the way forward. One needs only to pore over the comprehensive findings and recommendations of the Presidential Commission on Reform of the Administration of Justice, the Presidential Committee on Prison Reform and Rehabilitation, and the Presidential Committee on Police Reforms.

68. Thus the commitment to engage in a meaningful process of reform in Nigeria is not new. What is of concern, however, is that such reform efforts have been short-lived, without the same commitment to follow-up.

69. The Special Rapporteur recognizes the significant challenges faced by the country. As the report of the Presidential Commission on Reform of the Administration of Justice in Nigeria states, "... transforming the administration of justice in Nigeria will have to be taken in the context of many and competing economic and human development challenges facing the country as a whole. However the ... justice sector is relevant and indeed central to poverty reduction initiatives...". Moreover, "the solution to many of the problems that ... [have been] ... identified does not lie only in budgetary appropriation, much of the issues can be resolved administratively ...".

70. Since the visit was carried out, the Special Rapporteur wishes to report on two important developments.

71. By letter dated 8 May 2007, President Obasanjo wrote to the Special Rapporteur to acknowledge receipt of a draft law on the definition and prohibition of torture in line with article 1 of CAT, information on OPCAT, and a new draft law on the establishment of a torture investigation commission, which he had requested at their 9 March 2007 meeting. He indicated that the Attorney General and the Minister of Justice were requested to use the draft laws as a basis for bills for consideration by the Federal Executive Council and onward transmission to the National Assembly for passage into law.

72. On 16 May 2007, the Government announced the release of all prisoners over 70, and those over 60 who have been on death row for 10 years or more; an information which was confirmed by the letter of the Nigerian Government dated 14 September 2007 (see paragraph 6 above). The Special Rapporteur welcomes this information and has requested the Government to provide detailed information on this process, including the numbers of prisoners released, the names of the death row prisoners that have been released, and the dates of their release.

73. The Special Rapporteur expresses his gratitude to President Obasanjo for taking these important initiatives. He calls upon the Government to expeditiously follow through.

74. As a member of the Human Rights Council, Nigeria has pledged cooperation with human rights treaty bodies, timely submission of State party reports, and declared its readiness to welcome Special Rapporteurs and to submit itself to universal periodic review. The invitation of the Government to the Special Rapporteur and the cooperation extended to him demonstrates Nigeria's willingness to open itself up to independent and objective scrutiny of its human rights situation, and reaffirms its commitment to cooperate with the international community in the area of human rights.

#### **Recommendations** (A/HRC/7/3/Add.4, paras. 75-76)

75. In this continuing spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with the assistance of the international community (i.e. the United Nations and other actors), take decisive steps to implement the following recommendations:

#### **Impunity**

- (a) The absolute prohibition of torture should be considered for incorporation into the Constitution;
- (b) The highest authorities, particularly those responsible for law enforcement activities, should declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with severe (long-term) prison sentences;
- (c) The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;
- (d) An effective and independent complaints system for torture and abuse leading to criminal investigations should be established, similar to the Economic and Financial Crimes Commission;

## Safeguards

- (e) The right to legal counsel should be legally guaranteed from the moment of arrest;
- (f) The power to order or approve arrest and supervision of the police and detention facilities should be vested solely with independent courts;
- (g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings;
- (h) Judges and prosecutors should routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;
- (i) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;
- (j) The maintenance of custody registers should be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time at which the family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer;
- (k) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present;
- (l) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;
- (m) Any public official found responsible for abuse or torture in this report, either directly involved in torture or ill-treatment, as well as implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty, and prosecuted. The Special Rapporteur urges the Government to thoroughly investigate all allegations contained in appendix I to the present report with a view to bringing the perpetrators to justice;
- (n) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, as well as adequate medical treatment and rehabilitation;
- (o) The declaration should be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;

## Conditions of detention

- (p) The release of non-violent offenders from confinement in pretrial detention facilities should be expedited, beginning especially with the most vulnerable groups, such as children and the elderly, and those requiring medical treatment subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement);
- (q) Pretrial detainees and convicted prisoners should be strictly separated;
- (r) Detainees under 18 should be separated from adult ones;
- (s) Females should be separated from male detainees;
- (t) The Criminal Procedure Code should be amended to ensure that the automatic recourse to pretrial detention, which is the current de facto general practice, is authorized by a judge strictly as a measure of last resort, and the use of non-custodial measures, such as bail and recognizance, are increased for non-violent, minor or less serious offences;

### Corporal punishment

(u) Abolish all forms of corporal punishment, including sharia-based punishments;

### Capital punishment

(v) Abolish the death penalty de jure, commute the sentences of prisoners on death row to imprisonment, and release those aged over 60 who have been on death row for 10 years or more;

### Violence against women

(w) Establish effective mechanisms to enforce the prohibition of violence against women including traditional practices, such as FGM, and continue awareness-raising campaigns to eradicate such practices, and expedite the adoption of the Violence against Women Bill;

### Prevention

(x) Security personnel shall undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;

(y) Security personnel recommended for United Nations, as well as regional, peacekeeping operations should be scrupulously vetted for their suitability to serve;

(z) The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism should be established - where the members of the visiting commissions would be appointed for a fixed period of time and not subject to dismissal - to carry out unannounced visits to all places where persons are deprived of their liberty throughout the country, to conduct private interviews with detainees and subject them to independent medical examinations;

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

76. In terms of international cooperation, the Special Rapporteur recommends that relevant international organizations, including the Office of the High Commissioner for Human Rights and the United Nations Development Programme and United Nations Office on Drugs and Crime, be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

## Norway

### Introduction

During the period under review, the Working Group on Arbitrary Detention visited Norway from 23 April to 2 May 2007 (please refer to document A/HRC/7/4/Add.2).

### Conclusions (A/HRC/7/4/Add.2, paras. 95-97)

95. The Working Group expresses its thanks to the Government of Norway for extending the invitation to visit the country and for providing the fullest cooperation conceivable before, during and after the visit.

96. During its mission, the Working Group observed a number of best practices in Norway designed to safeguard against arbitrary detention. They include a well-functioning criminal justice and penitentiary system in general and a remarkable legal-aid scheme, a true commitment to rehabilitation of prisoners, very few juveniles in custody, a low number of foreign nationals in detention awaiting their removal from the country and an efficient control mechanism in place with regard to committal to psychiatric institutions. The Working Group did not find any major issues of arbitrary detention.

97. The Working Group notes that the Government is well aware of the remaining areas where there is room for improvement to the system governing deprivation of liberty identified in the present report. The Working Group appreciates that those areas are being addressed.

### Recommendations (A/HRC/7/4/Add.2, para. 98)

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

- (a) The Working Group encourages the Government to continue to monitor the practice of imposing restrictions and deprivation of liberty to ensure that it is carried out on a case by case basis. In this context, it invites the Government to arrange a survey by the Director of Public Prosecution on applications for remand and restrictions and partial and complete isolation in pre-trial detention to follow up on the survey conducted in 1999 on the initiative of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Working Group would like to be informed of the results;
- (b) The Working Group also invites the Government to consider establishing a new system for challenging decisions taken by the correctional services authorities on restrictions or partial or total isolation imposed upon prison inmates serving their sentences. The Government might want to create an external commission to that effect following the example of the independent control commission for patients subjected to compulsory mental-health care;
- (c) The Working Group supports the establishment of a working group by the Ministry of Justice mandated to evaluate the current system of preventive detention. The Working Group would like to receive its report;
- (d) With respect to the “infoflyt” database, the Working Group recommends that the judiciary be granted access to the information as and when the information contained therein is relevant to decisions on the early release of a prisoner or on the release of a preventive detainee. The Working Group invites the Government to continue to monitor the development of the database and its use and to improve the system, if necessary;
- (e) The Working Group recommends that the Government resolve conflicts of competence between correctional service and health-care authorities with respect to the admission of mentally ill prison inmates to psychiatric hospitals. This could be achieved by creating an independent commission in which all stakeholders are represented. The commission could also take a final decision as to whether the person transferred from a prison to a psychiatric institution will be allowed to be transferred from a closed wing to an open wing in the context of treatment.

## Paraguay

### Introduction

During the period under review, the Special Rapporteur on torture visited Paraguay from 22 to 29 November 2006 (please refer to document A/HRC/7/3/Add.3).

### Conclusions and recommendations (A/HRC/7/3/Add.3, paras. 82-92)

82. The Special Rapporteur recognizes that Paraguay has come a long way in overcoming the legacy of the military dictatorship under General Stroessner by building up democratic institutions based on the rule of law and respect for human rights. He is impressed by the efforts of the Truth and Justice Commission to guarantee victims' right to know the truth about gross and systematic human rights violations committed by the former regime and its attempts to bring those responsible to justice.

83. He commends the 1992 Constitution, which makes provision for a number of important institutions and procedures for the protection of human rights, as well as providing for a comprehensive bill of rights, including a prohibition on torture and other forms of cruel, inhuman and degrading treatment or punishment which is absolute in nature. He also compliments the Government for ratifying the major international and regional human rights treaties prohibiting torture, as well as for having accepted the competence of the Human Rights Committee, the Committee against Torture and the Inter-American Court of Human Rights to decide on individual complaints. He also welcomes the fact that the Government was one of the first to ratify the Optional Protocol to the Convention against Torture.

84. Furthermore, he welcomes the work of the three inter-institutional mechanisms, which are currently actively carrying out visits to prisons, juveniles in detention and military barracks. He hopes that the national mechanism to be designated under OPCAT will build upon the experience and good work carried out by the three inter-institutional visiting bodies.

85. On the basis of his meetings with government officials and representatives of non-governmental organizations, on-site inspections of detention facilities and interviews with detainees and forensic medical experts, the Special Rapporteur concludes that torture is widely practised, primarily during the first days of police custody to obtain confessions, and is standard practice in some police stations, including by the Criminal Investigation Police in Ciudad del Este. He considers that the use of torture is exacerbated by the heavy reliance placed on confessions in the judicial system.

86. The situation of torture and ill-treatment in prisons has improved in recent years. However, the Special Rapporteur is concerned about the excessive use of isolation cells to punish detainees and allegations of beatings by prison guards. In relation to the military, the Special Rapporteur received credible allegations of hazing and beatings of conscripts.

87. The Special Rapporteur is concerned that article 309 of the Criminal Code, which purports to criminalize torture, does not comply with the definition contained in article 1 of the Convention against Torture. Article 309 provides that an act only constitutes torture if the perpetrator "intends to destroy or seriously damage the personality of the victim". This is an extremely narrow definition, one which is very difficult to prove. As a result, he is concerned that many acts that would constitute torture under the Convention against Torture are classified as the lesser offences of article 307 (physical injuries caused while exercising public functions) and article 308 (coercion with respect to testimonies) of the Criminal Code, which are both subject to statutes of limitations. The Special Rapporteur is further concerned that torture is not criminalized at all under the Military Criminal Code.

88. One of the main reasons for the continuing practice of torture and other ill-treatment in Paraguay is impunity. There is currently no effective, independent mechanism in place to receive complaints and investigate allegations of torture and ill-treatment as required by article 13 of the Convention against Torture. Furthermore, relevant actors, including police officials, prosecutors, judges and prison directors, generally fail to initiate ex officio investigations into possible cases of torture and ill-treatment (i.e. under the Criminal Code) in accordance with article 12 of the Convention. Since the Criminal Code entered into force in 1999, there has not been one conviction for torture under article 309 and only two persons have been convicted for causing physical injuries under article 307. A number of important safeguards contained in the Constitution and domestic legislation are not effectively guaranteed in practice. Furthermore, aside from limited provisions on compensation for victims of the dictatorship, victims of torture or ill-treatment do not receive any compensation or medical or rehabilitative support.

89. In the majority of prisons visited by the Special Rapporteur, he found overcrowding, a failure to effectively separate remand and convicted prisoners and a high incidence of inter-prisoner violence. The older facilities are especially deplorable as regards the conditions of cells, hygiene, and the provision of essential items such as adequate clothing, food and bedding. However, there is a failure in both new and old facilities to provide adequate food and health care, as well as education, leisure and rehabilitation activities. The failure of the authorities to provide for the basic needs of the detainees, together with the low salaries paid to prison staff, were found to be contributing factors to endemic corruption in the prison system.

90. The Special Rapporteur makes the following recommendations to the Government, aimed at preventing torture and ill-treatment and improving prison conditions. He is assured that every effort will be taken to implement his recommendations and stands ready to offer his full cooperation and assistance in this regard.

#### Impunity

- (a) The Government should amend the Criminal Code to bring the definition of torture into line with article 1 of the Convention against Torture;
- (b) The Government should criminalize torture in the Military Criminal Code in accordance with article 1 of the Convention against Torture and ensure that, in recognition of the grave nature of acts of torture, appropriate penalties are imposed;
- (c) The Government should establish an independent authority to investigate all allegations of torture and ill-treatment leading to criminal prosecutions;
- (d) The Government should ensure that public officials under investigation in relation to allegations of torture or ill-treatment are immediately suspended from their posts pending the outcome of the investigation, and any subsequent prosecution and trial. In the event that they are convicted of torture or ill-treatment, they must be immediately dismissed;
- (e) The Government should ensure that any competent authority initiates ex officio a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed (e.g. the Human Rights Office in the Office of the Public Prosecutor). Judges and prosecutors should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint by the defendant), order an independent medical examination;
- (f) Victims of torture and ill-treatment should receive substantial compensation and adequate medical treatment and rehabilitation. The compensation of victims of the Stroessner regime shall not be limited to torture having resulted in serious and manifest physical or psychological impairment, but be as comprehensive as demanded by article 14 of the Convention against Torture;
- (g) The Government should ensure that the Truth and Justice Commission receives unambiguous political and sufficient financial support in its work to elucidate past human rights violations of the State and related agents and to guarantee the victims' and their relatives' right to know the truth. All cases submitted by the Commission should be prosecuted rigorously;

(h) The Office of the Ombudsman is encouraged to assume a more proactive role in the probe of torture allegations and initiation of prosecutions of those responsible, as well as ensuring victims' right to compensation. The Special Rapporteur emphasizes the importance of the Office's independence when it comes to human rights protection, and calls upon all actors involved to comply with this requirement.

#### Prevention of torture

(i) The Government should ensure that the right to legal counsel is guaranteed in practice from the moment of arrest, as provided for in the Constitution and the Code of Criminal Procedure, particularly for those detainees who, due to financial constraints, are dependent on State-appointed lawyers. The sufficient availability of well-trained public defenders should be guaranteed. Moreover, public defenders are encouraged to handle their cases expeditiously and maintain regular contact with their clients;

(j) The Government should provide law enforcement personnel with extensive and thorough training on techniques for carrying out criminal investigations and effective interrogation techniques, using a curriculum which incorporates human rights education;

(k) In order to ensure that evidence obtained through torture is effectively excluded, confessions made by persons in custody without the presence of a lawyer and that are not confirmed by a judge should not be admitted as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping interrogations and any subsequent statements;

(l) The Government should ensure that medical examinations are carried out by qualified medical professionals as standard procedure when detainees are arrested, transferred and released;

(m) The Government should maintain accurate custody records of the time and place of arrest, the identity of arresting officers, the place of detention, the state of health upon arrival at the detention centre, the time relatives and lawyers are contacted and visited the detainee, and information on compulsory medical examinations on arrival and transfer and release;

(n) The Government should designate an effective and independent national mechanism to carry out preventive and unannounced visits to all places of detention in full compliance with the requirements of the Optional Protocol to the Convention against Torture, and seriously consider the recommendations to be presented by the working group, which should also comprise members of the civil society as well as independent experts;

#### Conditions of detention

(o) The Government should ensure that persons deprived of their liberty are confined in penitentiaries where conditions conform to the minimum sanitary and hygienic standards, and should eradicate overcrowding. This is particularly pressing with regard to the facilities in Ciudad del Este and Tacumbú;

(p) The Government should limit recourse to pretrial detention, particularly for non-violent, minor and less serious offences, and increase the application of non-custodial measures. The extensive use of imprisonment on remand is contrary to the presumption of innocence, aggravates overcrowding and exposes suspects to an environment of criminality and insecurity;

(q) The Government should provide detainees with basic necessities, such as sufficient and adequate food, bedding, health care, more work opportunities, education and rehabilitation activities, and ensure their free access to these services;

(r) The Government should eradicate corruption in the penitentiary and criminal justice system in general. In relation to the prison system, prison guards should receive an appropriate salary, to be paid without delays;

(s) The Government should ensure the effective separation of remand and convicted prisoners, as well as juveniles and adults. Effective separation includes ensuring that the two categories of prisoners do not mix, even during the day, which is the case in many open prisons;

(t) The Government should ensure that enough prison personnel are employed. Understaffing of prisons results in a lack of security for the staff members themselves and makes it difficult to fulfil their obligation to protect inmates from inter-prisoner violence. Furthermore, it increases the likelihood of escapes;



(u) The Government should ensure that the use of punishment cells is limited to those cases in which it is justified. The apparently standard practice of confining new arrivals in punishment cells should be halted, and procedures introduced to standardize full documentation of such measures. Detainees should be informed in advance about the length of their confinement in a punishment cell;

(v) All detainees should be effectively guaranteed the ability to challenge the lawfulness of their detention before an independent court, e.g. through habeas corpus proceedings, a sufficient number of public defenders, and an effective right to have access to legal counsel.

91. The Special Rapporteur also recommends that the relevant United Nations bodies, donor Governments and development agencies assist the Government of Paraguay in the implementation of these recommendations, and in particular in its efforts to improve the police and the prison system through the construction of facilities, as well as to provide appropriate training to police and prison personnel.

92. Donors are also encouraged to support the independent national preventive mechanism to be established in accordance with the Optional Protocol to the Convention against Torture with the task of carrying out unannounced and regular visits to all places of detention.

## Peru

### Introduction

During the period under review, the Working Group on Arbitrary Detention visited Peru from 29 January to 2 February 2007 (please refer to document A/HRC/7/7/Add.2).

### Conclusions (A/HRC/7/7/Add.2, paras. 63-74)

63. The Working Group is grateful to the Peruvian authorities for their speedy issuance of an invitation and their close cooperation with the Working Group, which was consistent with the standing invitation issued by Peru to all special procedures mandates and its current membership of the Human Rights Council.

64. The Working Group commends the Peruvian State for its prompt accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, as part of its policy of preventing the recruitment of Peruvians as mercenaries.

65. The Working Group recognizes the efforts made by the Government to regulate private security companies under Act No. 28879, for which implementing regulations are in preparation, and under Act No. 28806 (Labour Inspection Act) and Act No. 28950, on the Prevention of Trafficking in Persons and Smuggling of Migrants, but also notes with concern the appearance of new modalities in private security.

66. The Working Group sees the use of “independent contractors” by transnational private security companies in Iraq and Afghanistan as one of the new forms of mercenarism to emerge in the twenty-first century. These contracts can be viewed as establishing the same, or very similar, conditions to those set forth in article 1 of the 1989 International Convention. Although the contract does not state it in so many words, these “independent contractors” are individuals who have been recruited abroad, are motivated by the desire for private gain to fight in an armed conflict - for in providing such services they will be exposed to the extreme and unpredictable risks and perils of war - and to take part in the hostilities. Unlike article 47 of Additional Protocol I to the Geneva Conventions, the 1989 Convention does not use the term “direct part”, which means an independent contractor may perfectly well carry out passive functions but still be taking part in the hostilities. The Peruvians recruited in this way are neither nationals nor residents of either of the parties to the conflict. Nor are they military, members of the Army of the United States, one of the parties to the conflict, and they are not civilians since they are armed. They have not been sent by a State on official duty. The fine legal point is the fact that MVM Inc. and Triple Canopy, the contracting companies, admit to working directly for the United States Department of State. American private security companies have concluded contracts that appear to detail activities related to mercenarism, such as recruitment, training, financing and use of persons for the purposes of commercial gain.

67. The Working Group is concerned at the signing of a contract between Gun Supply SAC and the Army Arms and Ammunition Factory SA that allowed the use of military facilities. The Working Group welcomes the Ministry of Defence investigation showing that the Army failed to evaluate the political and international implications or to inform the Ministry of Foreign Affairs or the Ministry of Defence; it also welcomes the authorities’ assurances that situations of this kind will not arise again.

68. The Working Group is concerned at the recruitment and training of hundreds of Peruvians by private security companies for service in Afghanistan and Iraq. Some of these companies, subsidiaries of foreign multinationals, were registered in Peru, while others were operating illegally. Two Peruvians have been killed and a number of others injured. There are allegations of contractual irregularities, poor working conditions, overcrowding, unreasonable hours, failure to pay wages, abusive treatment and isolation, and failure to meet basic health and hygiene needs. Despite having been hired as security guards, they received military training in Peru or a third country and ended up performing tasks not specified in their contracts and thus not agreed.

69. The Working Group is aware that the actions of certain private security companies constitute new forms of mercenarism and that they may have taken the Peruvian authorities by surprise. Nevertheless, serious omissions on the part of the Peruvian State have been noted, along with shortcomings in compliance with its obligations under international law. The unfavourable socio-economic situation and marked level of unemployment that make contracts of this kind attractive to people do not diminish the Government's responsibility. The Working Group is concerned at the lack of action on the part of State bodies, particularly the Ministry of Labour and the Attorney-General's Office.

70. The Working Group is concerned at private security companies' hiring of off-duty members of the security forces, who use State property such as uniforms, weapons and ammunition; also at the type of arms and ammunition used by these companies, particularly those guarding mines. Peruvian law restricts access to and use of war materiel to the Armed Forces and the police, and possession of weapons of war is an offence under the Criminal Code. Yet it seems that private security companies can purchase unlimited quantities of arms and ammunition.

71. The Working Group draws attention to what is a growing problem in Latin America, namely the ever-closer connection between private security companies guarding key geostrategic sites such as mines, oilfields and water sources and the violent repression of social protest.

72. The Working Group is concerned at the conflation of legitimate social protest by communities in defence of their lands and environmental rights with criminal or terrorist activities and at the elimination, indictment and intimidation of community leaders, as well as intelligence agencies' surveillance of protesters. It is also concerned at the lack of any effective system of protection for human rights defenders. Those responsible for these unlawful acts seem to enjoy a degree of impunity inasmuch as, in many cases of police or judicial complaint, no charges are brought against the perpetrators or else those responsible remain at large.

73. The Working Group deplores the fact that, despite the Government's efforts to protect Fr. Arana, GRUFIDES leaders continued to be subjected to threats, tailing, spying and harassment in 2007.<sup>55</sup>

74. The Working Group welcomes the drafting by the Congressional Defence Commission of a bill prohibiting the hiring of Peruvians to provide security services in armed conflict zones.

**Recommendations** (A/HRC/7/7/Add.2, para. 75)

75. The Working Group wishes to make the following recommendations:

(a) The Office of the Ombudsman and sectors of civil society working to protect human rights should be involved in the drafting of the bill to bring Peru's legislation into line with international law, so as to ensure the broadest possible legal interpretation covering not only the offence of acting as a mercenary but also new forms of mercenarism;

(b) The Congressional Defence Commission's bill prohibiting the hiring of Peruvians to provide security services in armed conflict zones should be adopted;

(c) The authorities should maintain transparent registers of private security companies covering all matters relating to ownership, statutes, purposes and functions, as well as a system of regular inspections. Legislative and regulatory measures should be adopted to prevent any conflicts of interest when serving State officials act as owners or managers of such companies. Inquiries should be made to ascertain whether there are any conflicts of interest between the posts held by those members or former members of the military or police who are involved in private security companies. An authority should be set up over the Ministry of the Interior, either a parliamentary committee or a commissioner, with the power to monitor the activities of private security companies and to receive complaints;

(d) The competent authorities, in particular the Attorney-General's Office, should investigate all unresolved cases, especially the deaths of Peruvian nationals in the course of their activities in Afghanistan and Iraq;

- (e) Urgent measures should be taken to protect the rights of Peruvians still employed in Iraq and Afghanistan;
- (f) Further judicial measures should be taken as appropriate to conclude the investigations into those responsible for acts of intimidation and espionage against community environmental defence leaders in Cajamarca, in violation of their rights to personal liberty, privacy and life, and those responsible for the murders of community leaders;
- (g) The necessary judicial action should be taken to determine whether C & G Investigaciones SRL, Forza or the Yanacocha mining company are individually or jointly responsible for illegal acts;
- (h) It should be established whether members of the national security services, private security companies or mining companies operating in Peru have been involved in acts of intimidation;
- (i) The life and physical safety of members of GRUFIDES, and in particular of its director and Fr. Marco Arana, should be guaranteed in accordance with the decision of the Inter-American Commission of Human Rights;
- (j) The mechanisms of prior consultation established under the 1989 ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries should be observed.

## **Serbia (including Kosovo)**

### **Introduction**

During the period under review, the Special Representative of the Secretary-General on the situation of human rights defenders visited Serbia from 17 to 21 September 2007 (please refer to document A/HRC/7/28/Add.3).

### **Conclusions and recommendations** (A/HRC/7/28/Add.3, paras. 145-164)

145. The Special Representative is concerned about the overall climate that discourages expressions of criticism, dissent and resistance that characterize the action of human rights defenders. Several factors explain such a climate in Kosovo. The recent conflict with its wounds still open, vividly visible in the ongoing tensions along ethnic lines, has somehow absorbed and nullified all human rights issues and turned them into two issues: the determination of the political status of Kosovo, and the rights of minorities. The many years of international administration have distorted the dynamics between civil society and public authorities. In a system in which powers are vested in an international entity and are then transferred to a transitional national authority, there is all the more need to ensure that this process of transition has catered for the informed participation of civil society in decision-making, with the space to allow for critical assessment of progress. It is not enough to make funds available for the mushrooming of NGOs, but to ensure the growth of a vibrant and vigilant civil society and a human rights community that is able to carry out its advocacy and monitoring functions with independence and without fear.

146. While the Special Representative is aware of the extremely challenging environment for governance in Kosovo and fully acknowledges the positive contributions and good intentions of the international presence there, she is concerned about grievances expressed to her that indicate a sense of marginalization amongst many human rights defenders stemming from the practices or attitudes of the international administration. The Special Representative finds that an environment of trust can only be created if there is space to voice these sentiments and genuine grievances are addressed. She hopes that this will be done before the international presence leaves Kosovo, so that it does not leave behind any perceptions that observance of the best standards of transparency and accountability for the promotion and protection of human rights were in any way ignored or neglected in the implementation of its mandate by UNMIK, or other international partners.

147. The Special Representative considers the issue of accountability a central element of an enabling environment for the defence of human rights. If accountability mechanisms are deficient, human rights defenders are deprived of one of their primary means of action.

### **Recommendations addressed to UNMIK and the future international presence**

148. Address the problem of accountability as a matter of priority. The following measures should be adopted:

- a. Provide the Human Rights Advisory Panel with adequate resources to carry out its functions and ensure that there is no accountability gap on human rights violations committed by UNMIK and the future international administration. In the event UNMIK withdraws from Kosovo, complaints on violations committed should still be investigated and identified perpetrators held accountable;
- b. Extend full cooperation to the Human Rights Advisory Panel and the Ombudsperson and implement their findings.

149. Adopt measures to ensure that personnel of the international administration and NATO forces operate on the basis of United Nations standards, including when the domestic legislation of the countries of origin of

personnel of NATO forces, UNMIK regulations and those of a future international presence differ from United Nations standards.

150. Implement the recommendations of the Human Rights Committee on the independence of the judiciary and lack of legal certainty.

151. In the event that UNMIK withdraws from Kosovo and a future international presence takes over part of the functions it currently performs, ensure a system to address pending human rights issues both during the transitional period and after, and create accountability mechanisms for the future international presence. OHCHR should be asked to provide assistance and guidance in this area.

152. Hold a series of consultations at the highest level with the human rights community and other civil society actors on the legal and policy framework for human rights and the institutional development of Kosovo.

#### Recommendations for the consideration of the Provisional Institutions of Self-Government

153. The process of consultation with civil society and human rights defenders should be institutionalized and systematized so that their active participation in legislative and policy decision-making is ensured, particularly that of defenders working on the human rights of people discriminated against or marginalized. These include defenders working on Roma, Ashkali and Egyptian rights, and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights.

154. The Kosovo Assembly should consider institutionalizing the holding of regular public hearings.

155. Legislation on freedom of peaceful assembly complying with international human rights standards should be adopted. In drafting and implementing this legislation, the Guidelines on Freedom of Peaceful Assembly published by OSCE/ODHIR and the 2006 and 2007 reports of the Special Representative to the General Assembly, which focus on freedom of peaceful assembly and the right to protest in the context of freedom of assembly should be used for reference.

156. Bearing in mind that political commitment to mainstream human rights within governmental structures is fundamental, adequate resources should be provided to the human rights units within ministries and to the government human rights coordinator.

157. Full cooperation should be extended to the Ombudsperson, his/her reports debated and his/her recommendations implemented, and the institution should be provided with adequate resources for fulfilment of its mandate.

158. An appropriate and independent mechanism should be established to monitor the implementation of the legislation on access to information and it should be provided with the necessary resources to carry out its functions. Access to information of public interest should be granted as regards the documents and actions of UNMIK and any future international presence.

159. Programmes of continuous learning on human rights for the police should be envisaged; and training should be provided on non-discrimination and respect for diversity and on the specific vulnerabilities of LGBTI persons and of defenders working on their rights.

### Recommendations for the consideration of human rights defenders

160. Strengthen networks, coalitions and initiatives that have a multi-ethnic dimension. This will reinforce the credibility of the human rights message that is being taken forward and will contribute to a much needed healing process among communities.

161. Work towards a constructive engagement with accountability mechanisms like the Ombudsperson and the Human Rights Advisory Panel; disseminate information on their existence and the modalities to access them; and provide support to individuals who want to use them.

162. Enhance monitoring skills in order to monitor the actions of public authorities, including of the international administration, and ensure the credibility of reports by adopting the best standards of accuracy and objectivity. Human rights defenders should play a proactive role by making concrete recommendations and by creating effective strategies for their implementation.

### Recommendations for the consideration of the international community

163. Continue to provide support to civil society and human rights defenders. This should be done while respecting the independence of defenders in determining their priorities. When funding is given to international organizations, ensure that the programmes they implement envisage the transfer of capacities to local organizations.

164. Strengthen the capacity of defenders to do monitoring work and to use accountability mechanisms. A strong community of defenders in a position to monitor public authorities and report on their violations is the best way to ensure the accountability of the authorities and the good functioning of democratic institutions.

## Somalia

### Introduction

During the period under review, the Independent Expert on human rights in Somalia visited the country from 17 to 21 September 2007 (please refer to document A/HRC/7/26).

### Recommendations (A/HRC/7/26, para. 82)

82. The independent expert:

- (a) Calls upon the United Nations to encourage greater support to the Transitional Federal Institutions to press them to provide protection to the Somali population and to implement the human rights principles contained in the Transitional Federal Charter. The independent expert supports the establishment of a standing dialogue/engagement mechanism for the United Nations to address humanitarian and human rights issues with the TFIs;
- (b) Calls upon the Transitional Federal Parliament and Transitional Federal Government of Somalia to ensure that human rights safeguards and principles are included in all their deliberations, documentation, institutions and actions;
- (c) Calls upon all Somali authorities to provide full protection and independence for journalists and media personnel, human rights defenders and international humanitarian aid personnel operating in Somalia;
- (d) Calls upon the Transitional Federal Parliament to undertake discussions to work towards signing and ratifying the core international human rights treaties, in particular the Convention on the Rights of the Child;
- (e) Urges that in their engagement with the TFIs, the international community should emphasize and strongly support the building of key State institutions with the rule of law and human rights as their cornerstone;
- (f) Calls upon the United Nations and the Somali authorities to increase their efforts to address the immediate humanitarian needs and protect the human rights of the approximately 1 million internally displaced persons in Somalia;
- (g) Calls upon the United Nations and the international community to work with Transitional Federal Government officials to address, possibly through an inquiry or investigation, the issue of the very limited information available on the current human rights situation in Somalia and on any violations which allegedly took place in 2007 during the various rounds of fighting. Similarly, past injustices and human rights violations which have occurred during Somalia's 14-year civil conflict as well as under the previous regime must also be addressed;
- (h) Calls on the Secretary-General and the Security Council to establish a committee of independent experts to examine allegations of past massive human rights violations and crimes against humanity committed in Somalia, and to report on options for how these might be addressed;
- (i) Calls upon the international community to support Somalis in their reconciliation efforts and processes, bearing in mind that an event such as the recent National Reconciliation Congress is within a larger framework of reconciliation and as such is the beginning of a process which does not preclude other transitional justice initiatives or processes;
- (j) Urges that in the event that a United Nations mission is authorized for Somalia, such an operation include a human rights component to conduct monitoring and investigations as well as undertaking capacity development and awareness-raising, and have a strong mandate for the protection of civilians;
- (k) Urges that a human rights presence for Somalia be established, either as part of a peacekeeping operation or, more advisable, as a separate office. The human rights situation in Somalia is sufficiently grave that a focused human rights presence is required to monitor and report regularly on the situation and provide much-needed human rights expertise;
- (l) Calls upon Somali authorities to establish independent human rights institutions for the protection and promotion of human rights, and encourages the United Nations agencies as well as donor countries to provide technical assistance and financial support;



- (m) Calls upon all Somali authorities to pay serious attention to the protection of children and to coordinate with UNICEF and relevant international NGOs to achieve the goal of a better life for the children of Somalia;
- (n) Calls upon the Transitional Federal Government to increase its support for the Ministry of Gender and Family Affairs and to keep the human rights of women at the top of their agenda. The independent expert also urges the international community and the United Nations Country Team to support projects and programmes which benefit Somalia's women;
- (o) Urges the international community to reinforce their financial support and technical assistance to the Transitional Federal Parliament and Transitional Federal Government, with a view to ensuring that human rights are thoroughly integrated in the institutions, frameworks and laws which are being forged.

## South Africa

### Introduction

During the period under review, the Special Rapporteur on adequate housing visited South Africa from 12 to 24 April 2007 (please refer to document A/HRC/7/16/Add.3).

### Recommendations (A/HRC/7/16/Add.3, paras.91-106)

91. The Special Rapporteur welcomes the constitutional and legal emphasis given to the right to adequate housing, as well as the achievements of South Africa since the end of apartheid. He recommends that Member States study these examples and draw on South Africa's experience in this field.

92. The Special Rapporteur believes that South Africa should improve coordination amongst all government departments in charge of service delivery such as water, sanitation or electricity, and institutions in charge of implementing housing, land, health and social services policies, in order to ensure an integrated approach which recognizes the indivisibility of the human rights of individuals.

93. The Special Rapporteur suggests that a clear implementation strategy backed by rigorous monitoring and evaluation, and which involves affected communities, should be formulated at each level of Government and support organizations, in order to implement well-designated policies, such as "Breaking New Ground".

94. Revitalization of urban areas must take place in a way that genuinely promotes a socially and economically inclusive society. The redevelopment of urban areas must not be left only to market forces, as that could result in the exclusion of poor people from access to housing and livelihoods including essential public services.

95. South Africa should provide sufficient legal aid funding for civil and administrative law proceedings to ensure that people whose economic, social and cultural rights have been breached have proper access to affordable and quality legal representation to enforce their rights and seek redress, where appropriate, as provided for in the South African Constitution.

96. The Special Rapporteur believes there is a need to monitor the implementation of court judgements that protect the right to housing at all levels of the South African judiciary system. Given the mandate of the South African Human Rights Commission (SAHRC), it would help achieve progress in the fulfilment of economic, social and cultural rights to provide the Commission with the necessary resources to monitor the implementation of Court judgements related to the realization of these rights. The SAHRC should increase its monitoring and investigative work on the realization and violation of economic, social and cultural rights.

97. Given the apparently widespread problem of forced evictions across the country, the Special Rapporteur calls for a halt in the introduction of new provincial bills regarding eradication of slums and evictions until all national, provincial and local legislation, policies and administrative actions have been brought into line with constitutional provisions, relevant Constitutional Court judgements, and international human rights standards that protect the human right to adequate housing and freedom from forced eviction.

98. Concerning evictions, the Special Rapporteur urges the authorities to implement relevant Constitutional Court judgements on the right to adequate housing and on forced evictions and to draw lessons from the human rights principles upheld in these judgments for the formulation of national, provincial and local housing law and policies.

99. The authorities should prosecute all farmers who illegally evict farm workers. At the same time human rights education is necessary to ensure that all citizens know about their human right to housing and their right to be protected against eviction.

100. In order to achieve the agreed land reform goals the Special Rapporteur calls for the adoption by the Government without delay of the recommendations of the 2005 Land Summit. The Special Rapporteur endorses the call for inclusive partnerships in which the Government works, in cooperation with social movements, landless people, farming communities and other actors, towards holistic agrarian reform.

101. The Special Rapporteur urges the authorities to ensure that mining projects are in line with national regulations, and to assess the impact of mining activity on local populations. In situations such as in Limpopo Province, where there appear to be serious irregularities and human rights violations, the lease agreement should be reviewed.

102. There must be commitment across all levels of Government to adequate consultation and participation of civil society in planning. This may require considering how to provide national and local funding of civil society organizations. South Africa may want to consider creating a mediation service carrying out the statutory obligations referred to in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act and the Extension of Security of Tenure Act and expanded to do relevant research, with the capacity to inform court judgements on evictions and able to provide up-to-date information to those seeking advice on housing issues.

103. The Special Rapporteur highlights the importance that water has in the fulfilment of the right to the highest attainable standard of health, the right to adequate housing and the right to adequate food; he believes the prepayment meters may, as implemented currently, severely compromise the realization of numerous human rights and be contrary to the constitutional provisions guaranteeing the right to housing and the right to water. The Government should reconsider this policy and associated financing arrangements, in order to further improve its efforts to ensure the equitable access of all to water. The Government of South Africa could also consider developing a national water strategy, including the establishment of a national water regulator.

104. In pursuit of a continuing increase in comprehensive coverage of civic services, which are essential to the realization of the right to adequate housing, including water, electricity and sanitation, South Africa may wish to consider allocation of a greater share of the central budget to local municipalities.

105. The Special Rapporteur recommends that all possible measures be taken in order to ensure equal opportunities in access to housing. There is an urgent need to restructure the availability of rental housing for low-income groups, to guarantee security of tenure for tenants and to formulate a specific national policy for groups with specific housing requirements (special housing needs).

106. The Special Rapporteur encourages South Africa to consider ratifying the International Covenant on Economic, Social and Cultural Rights, so as to reflect in its international legal obligations the same progressive approach enshrined in its Constitution, and to consider carefully the implementation of concluding observations formulated by the United Nations human rights treaty bodies, as well as the recommendations made by special procedures of the Human Rights Council.

## Spain

The Special Rapporteur on adequate housing visited Spain from 20 November to 1 December 2006 (please refer to document A/HRC/7/16/Add.2 as well as to A/HRC/4/18/Add.3).

### Conclusions and recommendations (A/HRC/7/16/Add.2 , paras. 84-104)

84. Since the mission took place, the Special Rapporteur was pleased to hear that the Government has responded positively to his initial comments and its commitments to promptly address the situation. For instance, the Government has acknowledged the necessity to develop public rental housing and has initiated fiscal deductions for tenants to support this housing option.

85. In addition to these steps, the Special Rapporteur believes that Spain should reflect on its economic and social policies. Policies and laws that flow from such a reconsideration should be underpinned by a human rights approach to housing and to land. The Spanish Constitution and the international human rights instruments can be the driving force of this approach. Rigorous human rights education and learning is necessary in all the line Ministries in Spain including knowledge of general comments and other interpretative instruments that can assist in law and policymaking on the right to adequate housing.

86. Despite the fact that constitutional provisions recognize housing as a basic right, housing, in practice, is currently considered as a mere commodity to be bought and sold. In this context, the social function of housing needs to be recovered and article 47 of the Constitution fully implemented. All sectors of society, including developers, constructors, real estate agents, civil society groups and other public and private actors, must play a role in the realization of this basic human right.

87. Spain should adopt a comprehensive and coordinated national housing policy based on human rights and the protection of the most vulnerable. In this context, the Special Rapporteur calls for an indivisibility of human rights approach in relation to policies on adequate housing. There is also a need to integrate social policies in all housing and urban planning and policies.

88. The Spanish authorities should gather disaggregated data on housing conditions, particularly of vulnerable groups, that will provide the Government with the information needed to initiate policies consistent with its human rights and constitutional obligations.

89. Legislations and policies at State and autonomous region level should recognize economic, social and cultural rights, in particular the right to adequate housing. The Special Rapporteur recommends that the draft national human rights plan of action fully include economic, social and cultural rights.

90. The Special Rapporteur believes that the primacy given to the homeownership policy model has had several negative impacts on the realization of the right to adequate housing. Firstly, it has marginalized sectors of society that do not have enough means to purchase their homes and those who face discrimination. These groups include, women, low-income households, migrants, young people, the elderly, and Roma. Secondly, it has generated uncontrolled speculation. This has also led to numerous problems, including cases of corruption that have been widely publicized in the media and are being investigated. Over-construction in various regions of the country has also had a grave impact on the environment and long-term sustainability of some regions, including along the Spanish coasts.

91. The functioning of the market, the current homeownership model and its possible negative impact on low-income housing options should be seriously reflected upon. The Special Rapporteur believes that there is no alternative but for the Government, at all levels, to more rigorously intervene and regulate the market in land

and housing, to secure the effective implementation of the right to adequate, affordable and accessible housing by bringing down housing and land prices.

92. The Special Rapporteur believes that the ownership model is the result of policies introduced in the last decades that have strongly encouraged the ownership model both in public and private housing sectors through tax deductions and other means. This has led to a situation where other tenancy regimes, such as rental for lower income sectors, were not sufficiently promoted.

93. The Special Rapporteur reiterates the recommendation of the Committee on Economic, Social and Cultural Rights (CESCR) in which it requested Spain to “take remedial action to improve the conditions of housing, and provide more housing units, housing facilities, credits and subsidies to low-income families and disadvantaged and marginalized groups, in line with the Committee’s general comment No. 4”.

94. The State should also heavily penalize practices such as “real estate mobbing”, corruption and discrimination in the real estate sector. Proper mechanisms to investigate, sanction and provide redress for such activities should be made fully available to all residents of Spain. The Special Rapporteur is of the view that more rigorous investigations and prosecution of those responsible in these cases, including developers, is necessary and calls for more rigorous implementation of existing legislation, such as the relevant provisions of the new land law.

95. All levels of governments should consider the application of the basic principles and guidelines on development-based evictions and displacement, including the recommendation to conduct eviction impact assessments.

96. Spain may want to consider the establishment of a well-resourced and independent human rights commission at all levels, based on the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Special Rapporteur also believes that the Offices of the Ombudsman should be reinforced. The proper functioning of such independent bodies is essential, to enable those individuals that have faced violations of the right to housing to have access to effective complaint and redress mechanisms.

97. The Special Rapporteur believes that the State should ensure justiciability of the right to adequate housing contained in the Spanish Constitution and relevant international instruments, through accessible complaint mechanisms available to all. A timely implementation of the recommendations of treaty bodies and Special Rapporteurs is necessary.

98. All levels of Government should urgently address the adverse situation of the lack of housing and social services for some parts of society, including for vulnerable groups and people on low-incomes, the homeless, migrants and Roma communities.

99. Given the interlinkages between violence against women and women’s right to adequate housing, the Special Rapporteur recommends that the Spanish authorities continue and develop their work on this issue, including to act with due diligence to prevent, investigate and punish acts of violence against women; to ensure access to temporary and appropriate shelters; and to ensure their security in any given circumstance. The Special Rapporteur recommends that the Government utilize, in this context, the solutions proposed in the work of the Commission on Human Rights on women and housing, such as the introduction of anti-violence provisions in housing legislation and policies and ensuring that domestic violence laws include provisions to protect women’s right to adequate housing, including the right to privacy and security.

100. The authorities must ensure affordable public social housing meeting the needs of all, and the creation of various types of accommodation, in order to be able to cope with various situations. Such accommodation should include shelters, emergency housing, boarding houses and transitional housing.

101. There is an urgent need to increase the availability of rental housing, through building more affordable rental housing, a more intensive use of vacant buildings, but also through consolidation of a publicly managed stock of rental housing targeted at meeting the demands of the low-income population and guaranteeing security of tenure for tenants.

102. The Special Rapporteur urges the Spanish authorities to adopt an official definition of homelessness. In order to address the situation, it is of the utmost importance to gather reliable statistics and data on the phenomenon in Spain, as previously requested by the Committee on Economic, Social and Cultural Rights.<sup>92</sup> The Government should also develop a comprehensive social reintegration programme for all of the homeless, in coordination with the housing and social affairs departments of the different public administrations and NGOs, increase the number of places for emergency as well as transition shelters, and include the problem of homelessness in its housing policy.

103. The Special Rapporteur recommends that all possible measures be taken in order to ensure equal opportunities in access to housing, as well as to implement strong mechanisms to document discrimination in access to housing, including statistical tools.

104. The Special Rapporteur takes note of recent efforts by the Government at various levels to consult civil society on the design of housing and urbanization policies, strategies and planning, notably the State Housing Plan in 2005 and the Federal Land Law Bill, and calls upon the Spanish authorities to continue their efforts to ensure they are increasingly genuine and effective.

## Sri Lanka

### Introduction

During the period under review, the Special Rapporteur on torture and the Representative of the Secretary General on the human rights of internally displaced persons visited Sri Lanka.

The Special Rapporteur on torture visited Sri Lanka from 1 to 8 October 2007 (please refer to document A/HRC/7/3/Add.6).

### Conclusions (A/HRC/7/3/Add.6, paras. 90-93)

90. The Special Rapporteur concludes that the Government of Sri Lanka has set a number of important legal steps in order to prevent and combat torture as well as to hold perpetrators accountable. Most notably, the enactment of the Torture Act No. 22 of 1994 and the Corporal Punishment Act No. 23 of 2005 as well as legal safeguards in the Code of Criminal Procedure constitute positive legal measures in the fight against torture. The Special Rapporteur is further encouraged by the fact that capital punishment has not been executed in Sri Lanka for more than three decades. The fact that a system of JMOs is in place in the country is also a positive sign.

91. However, the system set up by these positive measures cannot be regarded as fully effective. The high number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the even higher number of complaints that the NHRC continues to receive on an almost daily basis indicates that torture is still widely practised in Sri Lanka. Obstacles for victims of torture to access the JMOs result in loss of important medical evidence which in turn impedes criminal proceedings against perpetrators. The absence of an obligation on law enforcement officials or judges to investigate cases of torture ex officio further aggravates the situation for victims. In general, the lack of effective witness and victim protection prevents the effective application of the laws in place.

92. Under the Emergency Regulations, most of the safeguards against torture mentioned above either do not apply or are simply disregarded, which leads to a situation in which torture becomes a routine practice in the context of counter-terrorism operations. The non-applicability of important legal safeguards in the context of counter-terrorism measures, as well as excessively prolonged police detention, opens the door for abuse. The Special Rapporteur is also shocked by the brutality of some of the torture measures applied to persons suspected of being LTTE members, such as burnings with soldering irons and suspension by the thumbs.

93. The Special Rapporteur is also concerned about the reported links between the Government and the TMVP-Karuna group, which were confirmed by the representative the Special Rapporteur met in Trincomalee. The TMVP-Karuna group has been accused of particularly brutal human rights abuses.

### Recommendations (A/HRC/7/3/Add.6, paras. 94-95)

94. The Special Rapporteur recommends that the Government:

- (a) End impunity for members of the TMVP-Karuna group;
- (b) Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations;
- (c) All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings;
- (d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;

- (e) Ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;
- (f) Ensure all public officials, in particular prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, to report ex officio to the relevant authorities for proper investigation in accordance with article 12 of the Convention against Torture;
- (g) Ensure that confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence against the persons who made the confession;
- (h) The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress;
- (i) Expedite criminal procedures relating to torture cases by, e.g., establishing special courts dealing with torture and ill-treatment by public officials;
- (j) Allow judges to be able to exercise more discretion in sentencing perpetrators of torture under the 1994 Torture Act;
- (k) Drastically reduce the period of police custody under the Emergency Regulations and repeal other restrictions of human rights under them;
- (l) Develop proper mechanisms for the protection of torture victims and witnesses;
- (m) Ensure that the constitution and activities of the NHRC comply with the Paris Principles, including with respect to annual reporting on the human rights situation and follow-up on past cases of violations;
- (n) Establish appropriate detention facilities for persons kept in prolonged custody under the Emergency Regulations;
- (o) Establish an effective and independent complaints system in prisons for torture and abuse leading to criminal investigations;
- (p) Investigate corporal punishment cases at Bogambara Prison as well as torture allegations against TID, mainly in Boosa, aimed at bringing the perpetrators and their commanders to justice;
- (q) Design and implement a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and modernizing the prison facilities;
- (r) Remove non-violent offenders from confinement in pre-trial detention facilities, and subject them to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement);
- (s) Ensure separation of remand and convicted prisoners;
- (t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an absolute minimum as required by article 37 (b) of the Convention on the Rights of the Child;
- (u) Abolish capital punishment or, at a minimum, commute death sentences into prison sentences;
- (v) Establish centres for the rehabilitation of torture victims;
- (w) Ratify the Optional Protocol to the Convention against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty throughout the country, and carry out private interviews;
- (x) Ensure that security personnel undergo extensive and thorough training, using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education; and
- (y) Establish a field presence of the Office of the United Nations High Commissioner for Human Rights with a mandate for both monitoring the human rights situation in the country, including the right of unimpeded access to all places of detention, and providing technical assistance particularly in the field of judicial, police and prison reform.

95. The Special Rapporteur encourages the international community to assist the Government of Sri Lanka in the follow-up to these recommendations.



The Representative of the Secretary General on the human rights of internally displaced persons visited Sri Lanka from 14 to 21 December 2007 (please refer to document A/HRC/8/6/Add.4).

**Conclusions and recommendations** (A/HRC/8/6/Add.4, par. 82- 87).

82. Sri Lanka's displacement crisis is a challenge because of its size and the range of circumstances in which IDPs live, their immediate needs, and the challenges they face finding durable solutions. The Representative acknowledges the substantial achievements of the Government but believes that significant 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 of Sri Lanka's IDPs. In this spirit, he makes the following conclusions and recommendations.

83. Concerning the national response, the Representative recommends that the Government:

(a) Develop a comprehensive policy addressing all aspects of internal displacement, in line with the Guiding Principles on Internal Displacement. This policy should assign institutional responsibilities and establish accountability and should address issues including standards for registration and deregistration, entitlements to assistance and equitable standards for compensation for loss of property and livelihoods. It should also enshrine the principle of voluntariness of return in safety and dignity and the right of IDPs to informed choice;

(b) Allocate sufficient resources and increase its own capacity to protect and assist IDPs;

(c) Ensure consistent and accessible dissemination of information to IDPs concerning their rights and entitlements, and procedures for accessing them;

(d) Establish mechanisms to ensure that IDPs are consulted and participate in decisions affecting their lives;

(e) Undertake contingency planning for increased displacement in the North, in particular that both military and civilian authorities be prepared to receive IDPs in conditions of safety and dignity;

(f) Support international and national humanitarian actors in their efforts through advance communication and consultation and facilitated access to all IDP and returnee populations for assistance, protection and early recovery activities alike.

84. With regard to the 300,000 displaced since 2006 who have returned home or remain in displacement, the Representative recommends that the Government:

(a) Address all sources of insecurity and threats to safety, including abductions and disappearances, the presence of armed elements in camps and transit sites, the presence of UXO in return areas, heavy-handed responses by security forces, and the use of additional identification to restrict returnees' freedom of movement;

(b) Restore security through increased civilian police presence, including local and Tamil-speaking police, and promptly restore civilian administration;

(c) Take effective measures to address impunity;

(d) Assure, at all times, the right to adequate shelter;

(e) Recall, with regard to housing and property, that participation in needs-based assistance schemes does not negate rights to restitution or compensation;

(f) Ensure that access to livelihoods and basic services is provided in parallel with return.

85. Concerning the 300,000 IDPs in protracted displacement, the Representative:

(a) Urges national authorities and international agencies to identify and address obstacles to the achievement of durable solutions, including special attention to issues of landlessness and livelihoods and the needs of the most vulnerable, including widows and female-headed households;

(b) Calls upon all relevant actors to improve the standard of living and protection of individuals pending the achievement of durable solutions.

86. The Representative recommends that the United Nations, humanitarian and development organizations and donors:

- (a) Continue to support the Government of Sri Lanka in meeting its primary responsibility to protect and assist IDPs;
- (b) Continue to support capacity-building within the Government;
- (c) Address gaps that fall between traditional humanitarian and development assistance but that are necessary to establish the conditions for durable solutions, including efforts supporting early recovery and confidence-building and stabilization measures, with attention to protracted situations;
- (d) Prioritize support for livelihoods initiatives for IDPs, host and return communities.

87. The Representative urges all parties to the armed conflict to:

- (a) Ensure full respect for and compliance with international humanitarian law, especially the prohibition against arbitrary displacement and the principle of distinction;
- (b) Fulfill their duty to facilitate rapid and unimpeded passage of humanitarian relief;
- (c) Ensure safe passage of all civilians seeking safety;
- (d) Recognize the impartiality and integrity of humanitarian assistance and ensure the safety and security of all humanitarian workers.

## Sudan

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Sudan visited the country from 25 July to 2 August 2007 (please refer to document A/HRC/7/22)

### Conclusions (A/HRC/7/22, paras. 75-78)

75. The protection of human rights in the Sudan remains an enormous challenge. Human rights continue to be violated, including freedom of expression and association. Political opposition parties, journalists, students, internally displaced persons and tribal leaders continue to be targeted because of their activities. This is of particular concern as the country prepares for elections in 2009.

76. In the Darfur region, gross violations of human rights continue to be perpetrated. The Government of the Sudan has the primary responsibility to ensure protection of civilians. To date, however, the steps taken have been insufficient to have a tangible impact on the ground in Darfur. After all the debates, the Special Rapporteur sincerely hopes the deployment of the African Union - United Nations Hybrid Operation in Darfur (UNAMID) will increase security and the protection of civilians in Darfur. Unfortunately, in December 2007, UNAMID was still facing difficulties, including shortages in troops and assets. The Government of the Sudan is not facilitating the deployment by opposing some non-African contingents; also, flight clearances and access to land and water have been obstructed. The protection of civilians during armed conflicts is an absolute priority.

77. Justice and accountability continue to be a major challenge, especially with regard to serious crimes. Several investigative committees have been formed following allegations of serious human rights violations in the north and in Southern Sudan. However, the findings have not been made public and, according to information received, no perpetrators have been prosecuted.

78. The advancement of economic, social and cultural rights is going at an extremely slow pace. Widespread poverty and marginalization continue to be sources of political unrest throughout the country. This situation is seriously inhibiting the delivery of basic social services, such as health care, education and water supply, especially in Southern Sudan.

### Recommendations (A/HRC/7/22, para. 79)

79. The Special Rapporteur reiterates all previous unimplemented human rights recommendations contained in her reports, those of the High Commissioner for Human Rights and of the Group of Experts on Darfur. In addition, she recommends that:

(i) The Government of National Unity:

(a) Continue and intensify efforts to implement the recommendations compiled by the group of experts on Darfur, in accordance with the specified time frames and indicators (A/HRC/5/6, annex I);

(b) Accelerate the implementation of the Comprehensive Peace Agreement and establish the remaining commissions, in particular the national human rights commission, in accordance with the Paris Principles;

(c) Revise national laws to conform with the Comprehensive Peace Agreement, the Interim National Constitution and international human rights standards; priority attention should be given to the National Security Forces Act;

(d) Address impunity and ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are brought to justice promptly, in particular those with command responsibility;

(e) Fully cooperate with the International Criminal Court and the international community to arrest those who are accused of war crimes and crimes against humanity;

- (f) Ratify the remaining international instruments for the protection of human rights, including 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 Protection of the Rights of All Migrant Workers and Members of Their Families, and the Rome Statute of the International Criminal Court;
- (g) Fully cooperate with the United Nations and the African Union to facilitate the deployment of UNAMID to Darfur and remove any obstacles that may hinder this humanitarian effort;
- (ii) The warring factions:
  - (a) Respect obligations under international human rights law and international humanitarian law, in particular with regard to the protection of civilians;
  - (b) End all attacks on civilians, including human rights defenders and humanitarian workers;
- (iii) The Government of Southern Sudan:
  - (a) Ensure adequate means and resources are provided to the institutions responsible for the administration of justice and rule of law so as to facilitate a necessary improvement in access to justice, including the provision of legal aid services;
  - (b) Accelerate the process of legal reform, in accordance with the Comprehensive Peace Agreement, the Interim Constitution of Southern Sudan and international standards of human rights;
  - (c) Urge the Ministry of Legal Affairs and Constitutional Development and the Southern Sudan legislature to pass the revised enabling legislation for the Southern Sudan Human Rights Commission;
  - (d) Prevent SPLA interference in the administration of justice, especially in the work of the police and the judiciary, and provide appropriate training to former SPLA members integrated into the institutions of the Government of Southern Sudan;
  - (e) Address impunity and ensure that all allegations of violations of human rights are duly investigated, the findings of ad hoc commissions made public, perpetrators promptly brought to justice and reparations provided to victims;
- (iv) The international community:
  - (a) Continue to provide technical and financial support to the Government of National Unity and the Government of Southern Sudan, on the basis of a needs assessment, to fully implement the Comprehensive Peace Agreement and build democratic national institutions for the protection of human rights and the equality of all people in the Sudan;
  - (b) Support UNAMID politically and financially in accordance with the principle of responsibility to protect those who are not being protected by their own Government;
- (v) The United Nations:
  - (a) Urge UNAMID, in accordance with its mandate, to take the necessary measures to protect civilians, proactively deter attacks on civilians and prevent violations of international human rights law;
  - (b) Provide support and technical assistance to the Government of the Sudan, in accordance with assessed needs, for the implementation of its obligations under international human rights law;
  - (c) Provide technical assistance in the area of justice and encourage the Government of the Sudan to ensure that there is no amnesty for war crimes and crimes against humanity;
  - (d) Ensure that OHCHR and the UNMIS Human Rights Office continue to provide technical assistance to the Southern Sudan Human Rights Commission.

## **A/HRC/9/13**

### **Introduction**

The present report updates the previous one and covers the period from January to July 2008.

### **Conclusions** (A/HRC/9/13, paras.76-79)

76. Despite some steps by the Government of Sudan principally in the area of law reform, the human rights situation on the ground remains grim, with many interlocutors even reporting an overall deterioration in

the country. Human rights violations and breaches of humanitarian law continue to be committed by all parties. Land and air attacks by Government forces on civilians in Darfur; the 10 May Justice and Equality Movement attack on Omdurman; the arbitrary arrest and detention of hundreds of Darfurians; several serious incidents in Darfur, including the 12 May Central Reserve Police attack on Tawilla and the fighting between rebel groups near Kafod on 21 May; the fighting in Abyei in May between the Sudan Armed Forces and the Sudan People's Liberation Army (SPLA); and clashes between villagers and the SPLA in Torit, Eastern Equatoria on 4 June all entailed reports of serious violations being committed by all the parties to the conflict. It is essential that impartial, transparent and comprehensive inquiries be held to investigate allegations, identify perpetrators and hold them accountable. The Special Rapporteur reiterates her request that the Government of National Unity and the Government of Southern Sudan make the reports of investigative committees public in order to combat impunity and further the promotion of the rule of law.

77. Concerns are mounting about the violations of civil and political rights in different parts of the country in the lead-up to the general elections. In the period under review there have been widespread allegations of arbitrary arrests and detention, torture, incommunicado detention and serious violations of the right to fair trial.

78. One of the Special Rapporteur's principal concerns remains impunity. Allegations of violations of human rights are not duly investigated, nor are the findings made public. Perpetrators of serious crimes, such as the killing of civilians, have not been brought to justice and reparations have not been provided to victims. The Special Rapporteur has raised several cases on numerous occasions with the Government of the Sudan, however to date there has been no progress.

79. The Special Rapporteur's reports and recommendations contain her assessment of the gaps and the needs of the Sudan in order to further the protection of human rights in the country. During her visits to Sudan she was pleased to note that the United Nations bodies and agencies, UNAMID, UNMIS and others operational in Sudan with support from the Office of the United Nations High Commissioner for Human Rights, continue to provide technical assistance to the Government of Sudan with a view to assisting it to implement its obligations under international law. Donors have also continued to provide funds for technical assistance for the improvement of the human rights situation in the Sudan.

### **Recommendations** (A/HRC/9/13, para.80)

80. The Special Rapporteur reiterates all previous unimplemented human rights recommendations contained in her reports, those of the High Commissioner and of the group of experts mandated by the Human Rights Council in resolution 4/8. In addition, she recommends that:

- (a) The Government of National Unity:
  - (i) Continue and intensify efforts to implement the recommendations compiled by the group of experts, in accordance with the specified time frames and indicators;
  - (ii) Accelerate the implementation of the Comprehensive Peace Agreement and establish the national human rights commission, in accordance with the Paris Principles;
  - (iii) Revise laws to conform with the Interim National Constitution and international human rights standards; priority attention should be given to reform of the National Intelligence and Security Services;
  - (iv) Address impunity and ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are brought to justice promptly, in particular those with command responsibility. Given the seriousness of the allegations in Abyei, the Government of National Unity must take immediate action and support an in-depth, independent fact-finding inquiry and make the report public;

- (v) Fully cooperate with UNMIS and UNAMID and remove any obstacles that may hinder humanitarian efforts in Sudan;
- (vi) Engage in regular consultations with civil society to develop strategies to improve the human rights situation in the Sudan;
- (b) The warring factions:
  - (i) Respect obligations under international human rights law and international humanitarian law, in particular with regard to the protection of civilians;
  - (ii) End all attacks on civilians, including human rights defenders and humanitarian workers;
- (c) The Government of Southern Sudan:
  - (i) Ensure adequate means and resources are provided to the institutions responsible for the administration of justice and rule of law so as to facilitate a necessary improvement in access to justice, including the provision of legal aid services;
  - (ii) Ensure its budget is adequately distributed amongst key sectors such as education, health, social services, law enforcement and rule of law institutions, as well as offices working on human rights, the Southern Sudan Human Rights Commission and the office of the Presidential Adviser on Human Rights/Gender;
  - (iii) Accelerate the process of legal reform, in accordance with the Comprehensive Peace Agreement, the Interim Constitution of Southern Sudan and international standards of human rights;
  - (iv) Prevent SPLA interference in the administration of justice, especially in the work of the police and the judiciary, and provide appropriate training to former SPLA members integrated into the institutions of the Government of Southern Sudan;
  - (v) Address impunity and ensure that all allegations of violations of human rights are duly investigated, the findings of ad hoc commissions made public, perpetrators promptly brought to justice and reparations provided to victims;
- (d) The international community:
  - (i) Continue to provide technical and financial support to the Government of National Unity and the Government of Southern Sudan, on the basis of a needs assessment, to fully implement the Comprehensive Peace Agreement, build democratic national institutions for the protection of human rights and the equality of all people in the Sudan, and combat impunity;
  - (ii) Continue the constructive engagement with the Government of Sudan for the promotion and protection of human rights;
- (e) The United Nations:
  - (i) Ensure that UNAMID and UNMIS, in accordance with their mandate, take the necessary measures to protect civilians, proactively deter attacks on civilians and prevent violations of international human rights law;
  - (ii) Provide support and technical assistance to the Government of National Unity and the Government of Southern Sudan, in accordance with assessed needs, for the implementation of their obligations under international human rights law;

- (iii) Ensure that the Human Rights Council and the Office of the High Commissioner for Human Rights continue the constructive engagement with the Government and civil society in the Sudan for the promotion and protection of human rights.

#### **A/HRC/9/13/Add.1**

### **Introduction**

Report prepared by the Special Rapporteur on the situation of human rights in the Sudan on the status of implementation of the recommendations compiled by the Group of Experts mandated by the Human Rights Council in resolution 4/8 to the Government of the Sudan for the implementation of Human Rights Council resolution 4/8 pursuant to Human Rights Council resolution 6/34.

### **Conclusions and recommendations** (A/HRC/9/13/Add.1, paras.44-51))

44. The Special Rapporteur concludes that effective implementation of recommendations by the Government of the Sudan has been slow. The Government needs to engage fully in an open and constructive dialogue on concerns and take concrete steps to improve the human rights situation.

45. As regards activities undertaken by the Government to implement recommendations the Special Rapporteur notes that in only a few areas were necessary steps taken fully or to a significant degree to have a tangible impact. In more cases activities were undertaken but little or no tangible impact has been reported or only initial steps were taken towards implementation. In regards to some of the recommendations no implementation was reported at all.

46. The information provided on the human rights situation from UNAMID, UN agencies, bodies and programs with operational competence in Darfur and other relevant sources reflects an extremely critical situation which requires action. The information available does not confirm the Government's assessment of the impact on the ground of activities undertaken so far.

47. In particular, the Special Rapporteur assesses the status of implementation of the recommendations contained in the report (A/HRC/5/6, annex) as follows (for details see the appendix to this report):

- Full implementation (i.e. all recommended activities were carried out and, as a result, the situation on the ground has been reported to have improved accordingly): Recommendations 1.2.1, 1.2.6
- Significant activities were undertaken and tangible impact has been reported from the ground: Recommendations 4.6
- Activities were undertaken, but little or no tangible impact has been reported from the ground: Recommendations 1.1.1, 1.1.4, 1.1.5, 1.2.2, 1.2.4, 1.2.5, 1.2.7, 1.3.1, 1.3.2, 2.1.1, 2.1.4, 3.4
- Initial steps towards implementation were undertaken: Recommendations, 1.2.8, 1.2.9, 1.3.3, 2.1.2, 2.2.1., 2.2.2, 3.1, 3.2, 3.5, 4.1, 4.2, 4.3, 4.4, 4.7
- No implementation at all: Recommendations 1.1.2, 1.1.3, 1.2.3, 1.2.9., 1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.5.1, 1.6.1, 1.6.2, 2.1.3, 2.2.3, 3.3, 4.5, and 4.8

48. The Special Rapporteur, while acknowledging the activities undertaken by the Government of the Sudan is concerned that reports received from the ground clearly indicate that with very few exceptions these efforts still have not yet lead to an improvement of the situation of human rights in Darfur.

49. The Special Rapporteur acknowledges that full implementation of certain recommendations, may be

complex and tangible impact could take time, especially where recommended activities were undertaken only recently. The 12 month period for implementation of all recommendations, short and medium-term ended on 20 June 2008. The Special Rapporteur notes that in certain specific instances the feasibility of full implementation could have been affected by the absence of sufficient resources and technical assistance. However several recommendations which were prioritized as short-term and could have been implemented within a short term time frame, as they did not require lengthy administrative processes or additional resources, have not yet been implemented. The Special Rapporteur reiterates that the lack of resources cannot justify any acts of violence against the civilian population or the lack of action to prevent such acts.

50. The Special Rapporteur recalls the Council's consensus on the serious situation of human rights in Darfur and the need to focus on implementation of existing recommendations to enhance the human rights situation.

51. The Special Rapporteur recommends that the Council continue the process of reviewing the implementation of recommendations until such time as there is full implementation, or at least significant activities, and tangible impact has been reported from the ground. In recognition of the fact that the timeframe for implementation of the recommendations elapsed on 20 June 2008 and the Government of the Sudan still needs to effectively implement the majority of recommendations requested by the Human Rights Council, the Council could ask the Government why it has been unable to implement the recommendations and also consider what further action is required to concretely protect the human rights of people in the Darfur region of the Sudan.



## Tajikistan

### Introduction

During the period under review, the Special Rapporteur on freedom of religion visited Tajikistan from 26 February to 3 March 2007 (please refer to document A/HRC/7/10/Add.2).

### Conclusions and recommendations (A/HRC/7/10/Add.2, paras. 51-62)

51. The Government should actively protect and promote the freedom of religion or belief of both the Muslim communities and the various religious minorities in Tajikistan. The recommendations by the Special Rapporteur refer specifically to the issues of registration, proselytism, the situation of women, places of worship, conscientious objection and counter-terrorism measures.

52. The Special Rapporteur wishes to reiterate that the right to freedom of religion is not limited to members of registered religious communities (see also E/CN.4/2005/61, paras. 56-58). 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 reviews of the substantive content of the belief, the structure and the clergy. Finally, no religious group should be empowered to decide on the registration of another religious group. Consequently, a domestic provision prohibiting all unregistered religious activity would not be in conformity with international human rights standards. Re-registration requirements that operate retroactively or fail to protect vested interests should also be questioned and an adequate transition period should be envisaged concerning the application of new registration rules.

53. The Special Rapporteur cautions against the adoption of legal provisions that would prohibit actions directed at converting believers of one confession to others as well as any other charitable or missionary activity that exerts intellectual, mental or other pressure on citizens in proselyte aims. In this regard, the Special Rapporteur would like to refer to the section on missionary activities and propagation of one's religion in her 2005 report to the General Assembly (A/60/399, paras. 59-68), in which she stated that missionary activity was accepted as a legitimate expression of religion or belief and therefore enjoyed the protection afforded by article 18 of the International Covenant on Civil and Political Rights and other relevant international instruments. Missionary activity could not be considered a violation of the freedom of religion and belief of others if all involved parties were adults able to reason on their own and if there was no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.

54. The Special Rapporteur is concerned about the vulnerable situation of women in Tajik society, which is also partly influenced by traditional or perceived religious factors. She associates herself with the concluding comments of the Committee on the Elimination of Discrimination against Women adopted on 26 January 2007 and with the concluding observations of the Committee on Economic, Social and Cultural Rights adopted on 23 November 2006. The Government should be encouraged to review legal and administrative regulations in order to prevent religious unions from taking place without verification that a civil marriage has been registered first. The Government should also strengthen its efforts to eliminate the causes that lead to polygamous unions and develop strategies targeted at parents and religious leaders to prevent such unions. One of the possible measures to initiate change in the widely accepted subordination of women and stereotypical roles applied to both sexes could be awareness-raising and educational campaigns that address, inter alia, religious and community leaders. Most importantly, women themselves have to be empowered. With regard to the headscarf issue, the Special Rapporteur would like to refer to the section on religious symbols in her 2006 report to the Commission on Human Rights in which she emphasized that the fundamental objective should be to safeguard both the positive freedom of religion or belief as manifested in

observance and practice by voluntarily wearing or displaying religious symbols and the negative freedom from being forced to wear or display religious symbols (E/CN.4/2006/5, para. 60).

55. The Special Rapporteur would like to stress that, when taking administrative decisions, the authorities need to take into account the specific character of places of worship and their particular significance for believers. This is particularly relevant in the case of the country's sole synagogue, which has been in use for decades and is currently earmarked for demolition, to make way for the construction of a palace of nations and a national park. Furthermore, mosques, churches and other places of worship need to be fully respected and protected by the authorities. The Special Rapporteur would like to remind the Government of article 6 (a) of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief which states that the right to freedom of thought, conscience, religion or belief includes the freedom "to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes". Furthermore, in its resolution 2005/40, the Commission on Human Rights urged States to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and religious expressions are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction. Finally, in its resolution 55/254 on protection of religious sites, the General Assembly encouraged all States to promote a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind.

56. The Special Rapporteur is concerned that the Government of Tajikistan does not recognize the right to conscientious objection to compulsory military service. She would like to reiterate the recommendation of the Human Rights Committee that the Government take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. In line with the Human Rights Committee's general comment No. 22 (1993), when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. Furthermore, the Special Rapporteur encourages the Government to ensure that no legislation is adopted which overstates the permissible limitations on the freedom to manifest one's religion or belief, especially with regard to the issue of conscientious objection to compulsory military service.

57. The Special Rapporteur is conscious of the fact that the obligation of a State to protect and promote human rights require it to take effective measures to combat terrorism. However, she would like to underline that the State must ensure that any measure taken to combat acts of terrorism complies with its obligations under international law, in particular international human rights, refugee and humanitarian law. Some anti-terrorism measures could include elements, or have unintended consequences, that undermine the respect for fundamental human rights.

58. Since Tajikistan does not have an independent national institution for the promotion and protection of human rights, the Special Rapporteur encourages the Government to establish such a national human rights institution in accordance with the Paris Principles (General Assembly resolution, 48/134, annex). She also reiterates the concerns expressed by the Special Representative of the Secretary-General on the situation of human rights defenders about reports that State institutions dealing with human rights are not keen to extend their responsibility to providing human rights protection (E/CN.4/2006/95/Add. 5, para. 1563). Furthermore, she reiterates the recommendation of the Special Rapporteur on the independence of judges and lawyers that the competency of the Constitutional Court to consider individual complaints be enshrined in the Constitution and that the individual complaints procedures be extended to all violations of constitutional rights by acts of public authority (E/CN.4/2006/52/Add. 4, para. 94). An independent, neutral and impartial judiciary and prompt access to a lawyer are vital to safeguarding freedom of religion or belief.

59. The Government should be encouraged to respect the right to freedom of religion or belief of all individuals and religious communities, particularly when adopting specific legislation and policies. The

Special Rapporteur trusts that the Government is engaged in seeking the most appropriate approach to dealing with these complex issues, and she hopes that the Government will adopt creative means to address these pressing matters.

60. Children literally represent the future of each country. Almost half the population of Tajikistan is under 18 years of age; it is estimated that one fifth of the schools in Tajikistan were destroyed during the civil war of the 1990s. Providing quality education is crucial for the development of society. In general, there is an urgent need to promote, through education, the protection and respect for freedom of religion or belief in order to strengthen peace, understanding and tolerance among individuals, groups and nations, and with a view to developing respect for pluralism.

61. In this regard, the Special Rapporteur would like to draw the Government's attention to the final document of the International Consultative Conference on School Education in relation to Freedom of Religion or Belief, Tolerance and Non-discrimination, held in Madrid from 23 to 25 November 2001 (E/CN.4/2002/73, appendix). The final document adopted by consensus, could serve as a useful guide for educational policies aimed at strengthening the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief and of the right not to receive religious instruction inconsistent with one's own conviction. Recently, there have been promising initiatives in Tajikistan to train teachers, students and civil society members on the issues of religious identity, Islam and peace building. Such efforts could eventually lead to a better understanding of freedom of religion and of the role of religion in identity, conflict and conflict resolution.

62. In general, human rights are not going to flourish without overall freedom in society. As reiterated by the Vienna Declaration and Programme of Action, all human rights are universal, indivisible, interdependent and interrelated. People should not be afraid of expressing ideas frankly, raising their concerns to the authorities or bringing cases to court. Self-censorship may have adverse effects on the enjoyment of all human rights and fundamental freedoms. Furthermore, sustained interfaith dialogue, possibly including members of civil society and women, might prevent misunderstandings and eliminate some forms of intolerance or discrimination based on religion or belief. In addition, human rights education could promote understanding, tolerance and peace between all religious groups and might ultimately contribute to the effective promotion of religious tolerance. Such an approach might be a promising avenue for preventing incitement to discrimination, hostility or violence.

## Togo

### Introduction

During the period under review, the Special Rapporteur on torture visited Togo from 10 to 17 April 2007 (please refer to document A/HRC/7/3/Add.5).

### Conclusions and recommendations

80. The Special Rapporteur commends the Government for the many positive steps taken in the recent past, which have led to a considerable improvement of the situation. These steps include the commitment to and the partial implementation of the “22 undertakings” with the European Union, the establishment of an OHCHR field office in Togo and the concluding of the Global Political Accord. However, there remain several issues of concern.

#### Conclusions (A/HRC/7/3/Add.5, paras. 81-91)

81. Togolese criminal law does not contain an explicit definition and prohibition of torture in accordance with articles 1 and 4 of the Convention against Torture. Provisions of the Criminal Code regarding physical harm do not refer to the question of intention and the specific grounds for torture or ill-treatment; do not differentiate between private actors and public officials; do not cover the infliction of mental pain or suffering; and do not impose sanctions that reflect the gravity of the crime.

82. On the basis of interviews with detainees supported by forensic medical evidence and interviews with public officials, lawyers and representatives of NGOs, the Special Rapporteur concludes that, notwithstanding many positive developments since 2005, beatings and similar forms of ill-treatment still occur in the majority of detention places.

83. The Special Rapporteur notes with satisfaction that the situation with regard to ill-treatment in prisons has improved considerably since 2005. However, he found allegations and evidence of several cases of beatings by guards and other prisoners, i.e. as a means of punishment.

84. With regard to torture and ill-treatment by the police and the gendarmerie, the Special Rapporteur notes that some progress has been achieved and that he has not received serious allegations of torture since 2005. However, in most police commissariats and gendarmerie posts visited by the Special Rapporteur, he found persistent evidence of ill-treatment by law-enforcement officials, which was inflicted mostly during interrogation for the purpose of obtaining a confession, but also for reasons of punishment.

85. The Special Rapporteur is of the opinion that conditions in police and gendarmerie custody, but also in most prisons, amount to inhuman treatment. In particular, he is concerned about the severe overcrowding in most prisons, the deplorable sanitary situation, the quantity and quality of food, as well as the restricted access to medical services.

86. Safeguards against torture and ill-treatment are either insufficient or their implementation is not ensured. The Special Rapporteur is particularly concerned of the many instances where the 48-hour time limit for police/gendarmerie custody was not respected.

87. He is very concerned that minors and children are at greater risk of corporal punishment and ill-treatment than adults in situations where they are deprived of their liberty. He is also concerned about the absence of a specialized juvenile justice system.

88. With regard to female genital mutilation, the Special Rapporteur welcomes the 1998 Act No. 98-106 prohibiting female genital mutilation and the awareness-raising campaigns conducted by several NGOs and the Ministry for Social Action and Women's Promotion. However, he has received credible reports that the practice and its social acceptance persist, and that effective mechanisms to enforce the prohibitions are virtually absent.

89. The Special Rapporteur concludes that there is an urgent need for reform of the entire criminal justice system in order to drastically reduce the extremely high number of pre-trial detainees. Whereas he welcomes the Government's efforts in this regard, he deplores the overly long periods of pre-trial detention.

90. The Special Rapporteur has also found that impunity with regard to perpetrators of torture and ill-treatment is almost total. Whereas he has received information that some prison and army officers have been subjected to disciplinary sanctions, not a single torture or ill-treatment case has been decided by a criminal court. He is particularly concerned about impunity with regard to the violence that occurred during the 2005 elections and before.

91. At all stages of the criminal justice cycle corruption is involved, all too often accompanied by discriminatory practices. Corruption in prisons, practised by prisoners and frequently with the consent of the prison authorities, leads to unequal access to essential goods and constitutes a violation of international norms.

**Recommendations** (A/HRC/7/3/Add.5, paras. 92- 118)

92. He therefore recommends that the Government take further measures in order to fully implement its obligations under its Constitution and international human rights law. In particular, the Special Rapporteur recommends that the Government, with the assistance of the international community and OHCHR, should implement the following recommendations.

**Impunity**

93. The Government of Togo should criminalize torture in full accordance with article 4 and pursuant to the definition contained in article 1 of the Convention against Torture, and impose appropriate penalties.

94. It should fight impunity by introducing effective complaints mechanisms within places of detention leading to independent criminal investigations against perpetrators of torture and ill-treatment and to conduct thorough investigations into allegations of torture or ill-treatment ex officio; bring the perpetrators of torture or ill-treatment identified in the appendix to justice.

95. The Government should enact an explicit prohibition of corporal punishment and establish effective mechanisms to combat such practices.

96. With regard to minors, the Special Rapporteur reiterates the recommendations of the Committee on the Rights of the Child that Togo should take effective legal and practical measures and raise awareness about the negative impact of corporal punishment on children.

97. The Government should establish effective mechanisms to enforce the prohibition of violence against women, including traditional practices such as female genital mutilation, continue to organize awareness-raising campaigns and conduct a study to assess the prevalence of female genital mutilation in Togo.

98. The Government of Togo should support the National Human Rights Commission in its endeavours to become an effective player in the fight against torture and provide the necessary resources and training to the members and the staff of the Commission in order to enable them to process complaints.

## Safeguards

99. The Government should improve existing safeguards against torture by introducing effective habeas corpus rules; ensure that existing safeguards such as the 48-hour time limit for police/gendarmerie custody are respected; ensure that every detainee undergoes an independent medical examination after arrest and after each transfer; ensure that a detainee's family is promptly informed about the arrest; and set up a legal-aid system for persons accused of grave crimes.

100. The Government should ensure that pre-trial detainees have prompt access to the judiciary and are at all times aware of their rights and the status of their case, introduce time limits on pre-trial detention and enforce them through regular independent inspections.

101. The Government should amend the law in order to ensure that no convictions are based on evidence obtained under torture and that confessions do not constitute the main basis for convictions; as a first step issue clear guidelines to the courts on these issues.

## Use alternatives to imprisonment

102. The Government of Togo should divert minor cases from the criminal justice system through the use of restorative justice; introduce and strengthen alternatives to pre-trial detention and non-custodial measures of punishment; render the use of non-custodial measures obligatory unless there are compelling reasons for detention.

## Conditions of detention

103. The Government of Togo should continue efforts to improve detention conditions, in particular with a view to providing health care; treat rather than punish the mentally ill and provide suitable safeguards to protect them from torture and ill-treatment; improve the quantity and quality of food, also through the creation of prison farms, access to which however, needs to be non-discriminatory.

104. The Government should separate pre-trial prisoners from convicts and train and deploy female personnel to women's sections of prisons and custody facilities.

105. Togo should ensure that detainees are not deprived of their clothes when in gendarmerie custody.

106. The Government of Togo should ensure that the criminal justice system is non-discriminatory at every stage; combat corruption, which disproportionately affects the poor, the vulnerable and minorities; and take effective measures against corruption by State agents, but also by senior members of the prison hierarchy.

## Prevention

107. The Government should clarify the status of the gendarmerie and define clear responsibilities for the gendarmerie and the police; separate the military from internal law-enforcement functions; establish clear chains of command in prisons; and ensure that the prisons are managed by the authorities and not by the prisoner hierarchy.

108. The Government should improve training for law-enforcement and penitentiary personnel and mainstream human rights into the curricula.

109. The Government of Togo should ratify the Optional Protocol to the Convention against Torture, and establish effective national mechanisms to carry out unannounced visits to all places of detention.

### Juvenile justice

110. With regard to juveniles, Togo should take immediate measures to ensure that deprivation of liberty is used only as a last resort and for the shortest appropriate period of time and in appropriate conditions.

111. Rather than holding them in detention, separate entities outside the criminal justice system should be set up to take care of orphans and marginalized children, e.g. trafficked and street children.

112. The Government should introduce a juvenile justice system with trained police, prosecutors and judges and establish relevant safeguards, especially legal aid.

### Death penalty

113. Togo should abolish the death penalty.

### Elections

114. With regard to the elections held in October 2007, the Special Rapporteur welcomes the fact that they proceeded peacefully. He encourages the Government and political parties to continue to send strong signals to all stakeholders that torture and ill-treatment are unacceptable in an election context and that anybody who commits any act of violence will be held accountable. Elections should be conducted without any participation of the military.

115. The judiciary should speedily deal with the cases concerning alleged torture, ill-treatment as well as other human rights violations committed during the 2005 and earlier elections and bring the perpetrators to justice.

### Recommendation to the international community

116. The Special Rapporteur requests the international community to support the reforms of the judicial, law-enforcement and prison systems of Togo, provided that the Government complies with the above recommendations.

117. The Special Rapporteur welcomes the commitment of the Government to respect the 22 undertakings agreed upon with the European Union; however, he calls on the EU to insist on complete implementation of these commitments.

118. He urges the international community to support OHCHR in its efforts to build national capacity to protect human rights in Togo and to assist the Government in designing policies to implement all earlier commitments in the area of human rights and the present recommendations.

## Uganda

### Introduction

During the period under review, the Special Rapporteur on the right to health visited Uganda from 4 to 9 February 2007 (please refer to document A/HRC/7/11/Add.2).

There is no specific section related to recommendations on Uganda. For more details, please refer to the report.



## Ukraine

### Introduction

During the period under review, the Special Rapporteur on adverse effects of toxic waste and the Special Rapporteur on freedom of expression visited Ukraine.

The Special Rapporteur on adverse effects of toxic waste visited Ukraine from 22 to 30 January 2007 (please refer to document A/HRC/7/21/Add.2).

### Conclusions and recommendations (A/HRC/7/21/Add.2, paras. 49-55)

49. The mission to Ukraine allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of his mandate. The mission also provided him with a valuable opportunity to examine how a State has dealt with important environmental problems in an economy which has been in transition for just over 15 years.

50. The Special Rapporteur notes that Ukraine's legislative framework to address problems related to the illicit movement and dumping of toxic wastes or dangerous products is quite complete. He also notes that legislative developments are planned to make the framework regulating waste management and environmental protection even more stringent. The Special Rapporteur welcomes the work of both the Government and Parliament in this area.

51. The Special Rapporteur believes that even with a very well-developed legal framework, proper enforcement is essential to limit instances of illicit movements and dumping of toxic and dangerous products and wastes. In this regard he makes the following recommendations:

- All inbound shipments of materials should be accompanied by more detailed information indicating the origin of the product, its exact chemical composition, and a declaration on the use of this product by the receiving countries.
- Systematic controls of all shipments of raw materials should be carried out by customs officials, with random testing by independent laboratories to verify the conformity of the product with the customs declaration.

52. In relation to ex-post facto enforcement, the Special Rapporteur has had an excellent impression of the work of the Office of the Prosecutor General in the particular area of environmental crimes. In particular, he finds it encouraging that the Office has established a specialized branch in this area. The work of the Office of the Prosecutor General is particularly important, as a greater accountability of corporations may lead to fewer cases of illicit import and dumping and thus a better protection of the human rights of the affected population. He notes however, that procedures are long and complex and that this particular unit does not have sufficient resources in comparison with the vast number of complex cases that it needs to deal with. In this regard he recommends:

- An increase in the number of prosecutors working in this specialized unit.
- A larger number of prosecutors from other branches and in particular regional prosecutors to benefit from basic training or seminars on environmental crimes, in order to have the basic knowledge to supplement the work of this specialized unit.
- The Office of the Prosecutor General seeks to provide continuous training to members of this unit, in particular through international cooperation with similar units in other States so that experiences can be shared and best practices identified. In order to implement this recommendation, the Special

Rapporteur encourages all States to participate and encourage this type of exchange between specialized prosecutors.

53. The Special Rapporteur notes that while access to information is protected, in the particular cases he examined local authorities were not sufficiently proactive in providing information to members of the public that could have allowed them to take preventive measures. The Special Rapporteur invites authorities at all levels to provide all information available about potential environmental hazards as soon as possible, and to do so even if thorough testing is not completed, thus applying the precautionary principle. Access to information regarding environmental issues and their potential consequences for human rights thus appears to require some improvement.

54. Other recommendations based on his findings from the mission to Ukraine but not listed in order of importance are as follows:

- In cases of alleged illicit dumping, the sanitary authorities should systematically monitor the health of the local population in order to provide early detection of any potential impact on human health.
- The precautionary principle should guide the action of all government departments dealing with cases of illicit dumping of toxic or dangerous products and wastes. In particular, because of the difficulty of scientifically proving links between a product and adverse health effects, the action of sanitary authorities must always be guided by this principle.
- In the particular case of the quarry in Novy Rozdil, the authorities should remove the acid tars and dispose of them in an environmentally sound manner before the water which fills the quarry reaches them, in order to avoid the potential pollution of the waters of the Dniester.
- The Government should establish programmes that would lead to more centralized storage of obsolete pesticides, with the objective of eliminating small, unregulated and dangerous storage sites. In the implementation of these programmes the Government could envisage offering incentives to ensure their effectiveness.
- In order to deal with very important stockpiles of toxic wastes, such as obsolete pesticides and acid tars, Ukraine should seek and other States, in particular neighbouring States, should provide technical assistance so that appropriate and effective elimination technologies can be adopted.
- Countries of origin should accept the return of illegally or fraudulently exported toxic wastes and dangerous products and facilitate, when applicable, the implementation of the Basel Convention mechanisms.

55. The Special Rapporteur requests that he be kept informed of any further illicit import of toxic wastes and of any developments concerning the cases mentioned in this report.

The Special Rapporteur on freedom of expression visited Ukraine from 14 to 20 May 2007 (please refer to document A/HRC/7/14/Add.2).

### **Conclusions** (A/HRC/7/14/Add.2, par. 63-69).

63. Independent countries emerging from the dissolution of Soviet Union have been experiencing a period of transition marked by political instability and lack of consistent social growth. The legacy of a powerful and centralized state that characterized Soviet times still influences the behaviour of some State institutions, particularly law enforcement and regulatory agencies, as well as the way relations between the State and the media are structured at present.

64. Combined with a volatile economic growth, the present political context is marked by a high degree of polarization, which has been a negative influence on the empowerment of civil society and the strengthening of media independence. Due to ongoing political disputes, segments of the State that play a crucial role in the

safeguarding of democracy and fundamental rights, such as the Constitutional Court and the Electoral Committee, have also suffered of some limitations of their own prerogative to freedom of expression.

65. Within the media environment various trends exist: a reformist current aspires to information based on free circulation of ideas and opinions ensured by independent press and media enterprises. A more conservative group, which prefers to continue with old traditions and attitudes inherited by the Soviet regime, supports the pro-Russian parties. A third, more pragmatic group, offers its services waiting for the outcome of the political struggle. It should be underlined that the borders among these trends are very thin and that the pursuit for independence is equally strong.

66. The media environment is marked by poor finances and unilaterally-oriented investments. Like in many parts of the world, newspapers and other printed press endure the increasingly aggressive competition of electronic communications tools, while national television and radio channels are struggling to keep their own audience. Powerful media corporations, which have links with political and economic elites, may intervene on editorial content, narrowing diversity of opinions and installing self-censorship. Public interest is best served by a variety of independent news media, both print and broadcast, which must be allowed to emerge and operate freely. Unrestricted access to foreign media should be guaranteed at all times as it ultimately encourages the advancement of independence among the national media.

67. Bearing in mind the vital role played by the media in creating broad awareness of political, economic and social issues, the fact that journalists are still targeted by political and public figures, who should be ready to accept criticism and public screening because of their institutional role, is definitely worrying. Although Article 47 of the Law on Information guarantees that no one can be brought to justice for expressing opinions that have a character of assessment or evaluation, it still leaves room for public figures to target journalists with judicial proceedings.

68. Journalists, editors and other media workers are often under considerable pressure from holders of state bodies, economic lobbies and informal associations, with links to ordinary criminality, acting often in close cooperation. In this context, investigative journalism might reveal to be an uncomfortable exercise, notably when addressing sensitive subjects. Safety and independence of media in the provinces is often at stake. As a result, self-censorship may emerge as a way to guarantee personal security and some financial benefit.

69. The Special Rapporteur believes that some State institutions, particularly law enforcement agencies, have been downplaying the relevance of racist crimes in Ukraine. While noting that the ratification of the International Convention on Migrant Workers is under consideration, the Special Rapporteur remains convinced that the issue of racism is not adequately addressed by public institutions. The Special Rapporteur further underlines that many extremist groups, particularly neo-Nazi organizations, have used their prerogative of freedom of expression to convey messages of racism and racial hatred. International instruments, particularly the International Covenant on Civil and Political Rights, establish clear limitations on free speech when incitement to racial, ethnic or religious hatred is in question. The Special Rapporteur calls on public authorities to implement these provisions as an essential step to curb the spread of racism and intolerance in Ukraine.

**Recommendations** (A/HRC/7/14/Add.2, par. 70-79).

70. The Special Rapporteur urges the main political parties in Ukraine and their leaders to bear in mind, while pursuing their legitimate political aims, the importance of respecting its international human rights engagements and to promote a democratic process grounded on human rights and the rule of law. The Special Rapporteur further encourages all stakeholders involved in the exercise of freedom of opinion and expression to find fresh impetus in their work and to show genuine openness and commitment to dialogue with their counterparts. The Special Rapporteur also invites the United Nations and regional bodies to support all efforts to promote peaceful political debates and tolerance, and to strengthen freedom of opinion and expression, which remains one of the most effective tools for building constructive dialogue.

71. The Special Rapporteur calls for a broad and comprehensive revision of media legislation at large, but especially on TV and radio broadcasting. The existence of a growing body of law, at national level, on mass media has created certain confusion about duties and responsibilities of a number of institutions, whose activities may hinder the realm of freedom of expression. The Parliament should initiate a process of revision and simplification to be brought to an end quickly, in order, inter alia, to increase TV and Radio Broadcasting bodies' independence from political lobbies.

72. The Government of Ukraine and principal State institutions should encourage a new state of mind among public personalities and civil servants based on the concept of good governance, which includes, inter alia, the possibility of criticism and screening by the media as well as by ordinary citizens. New legislation should be adopted to protect the media's central role of ensuring accountability of state and government officials.

73. The Special Rapporteur urges the Government of Ukraine and relevant national bodies to further develop actions aiming to guarantee that crimes against media professionals and opinion-makers will not go unpunished. The Ministries of Interior and Justice should strengthen programs to ensure that media workers are adequately protected in performing their professional duties regardless to the identity of the possible aggressors. Protection schemes should be provided whenever necessary and effective judicial enquiries should be completed.

74. The Special Rapporteur urges the Government of Ukraine and relevant national bodies to take immediate and effective action in order to thwart the wave of racist violence which is invading the country. If not addressed properly, this phenomenon could seriously hamper the freedom of expression and of movement of foreign residents and migrant workers.

75. The Special Rapporteur esteems urgent that the Ministry of Interior and the Ministry of Justice extend human rights training programmes to all the personnel under their purview, including law enforcement officials. These training programmes should also have a specific focus on the principles of freedom of expression, public accountability and the fight against racism.

76. In order to improve the quality of journalism and disseminate professional ethics, the Special Rapporteur recommends that a school of journalistic ethics be established, with the support of international organizations, to organize training courses for journalists and other media professionals working in the country. Professional training and financial investments, especially an increase in salaries, may upgrade the moral stance of the press and the media industry at large.

77. The Government should strengthen the provision of remedial measures, including financial compensation as appropriate, for all media professionals and opinion-makers victims of violence and intimidation, in particular whenever law enforcement officials appear to have been involved in these criminal acts. *Mutatis mutandis*, a similar regime of compensation should be created in favour of those who have been victim of acts of racism and racial hatred.

78. Parliament should legislate on specific and urgent measures for the promotion of the print press, whose role, in a period of great technological revolution, remains fundamental for educational purposes, notably for the development of the reader's capacity of critical approach and analysis of information. In this regard, the Special Rapporteur welcomes the information provided by the Government that new changes in the legislation will be introduced soon, particularly concerning the mass media and social protection for journalists.

79. The Special Rapporteur invites the Government of Ukraine to consider appropriate legislation for the establishment of an independent national human rights commission, which will supplement the activities of the Office of the Ombudsperson, whose functions appear to be too numerous and varied.

## United Kingdom of Great Britain and Northern Ireland

### Introduction

During the period under review, the Special Rapporteur on freedom of religion visited United Kingdom from 4 to 15 June 2007 (please refer to document A/HRC/7/10/Add.3).

### Conclusions and recommendations (A/HRC/7/10/Add.3, paras. 60-80)

60. There is a great wealth of experience in the United Kingdom in dealing with religious tensions and terrorist acts carried out under the cover of religion. The Special Rapporteur commends the Government for the balanced approaches in responding to difficult situations with regard to freedom of religion or belief and tackling the contentious issues involved. During her meetings both with officials and with members of religious communities or non-governmental organizations, the Special Rapporteur was particularly impressed by the depth of analysis and the endeavour to solve the underlying problems as demonstrated by the authorities as well as by a vibrant civil society and academia.

61. Despite the overall respect for human rights and their value in the United Kingdom, there are some issues of concern with regard to freedom of religion or belief. The Special Rapporteur would like to highlight the following areas and make pertinent recommendations.

### Sectarianism

62. After almost four decades of sectarian violence in Northern Ireland, which claimed more than 3,500 lives, there seems now to be hope for a shared future. The Special Rapporteur welcomes the statutory duty for public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between persons of different religious belief. She was informed of promising initiatives which seek to cross the sectarian divide among the Christians, both at the political and grassroots levels. However, there remain several contentious areas such as inequalities along denominational lines in the labour market, housing, education, policing and criminal justice agencies.

63. The Special Rapporteur shares the concerns raised by the Committee on Economic, Social and Cultural Rights that the educational structure in Northern Ireland continues to be heavily segregated on the basis of religion, despite the increased demand for integrated schools. Furthermore, Catholic staff is underrepresented in the Police Service of Northern Ireland, the prison service and other criminal justice agencies. In this regard, the Special Rapporteur welcomes affirmative actions strategies to ensure that these agencies can recruit a more representative workforce. She would like to recommend that such measures should also address adequate representation of all religious or belief communities.

64. The Special Rapporteur is alarmed about reports that schoolchildren in Northern Ireland are often targets of abuse or physical attacks owing to their school uniforms or their itinerary to school, which are deemed to identify their religious affiliation. The Government has a duty to protect children against such attacks and should adopt the best interests of the child as a paramount consideration in all legislation and policy affecting children throughout its territory. In legislation on offences aggravated by hostility it may be advisable to refer not only to actual religious belief but also to the accused's perception of the religious, social or cultural affiliation of the targeted individual or group. The Special Rapporteur was told that sectarianism is deep-rooted in many minds; apparently even in casual conversations people try to seek indications - such as residence, education or support for a specific football team - about the religious affiliation of their interlocutor. In terms of prevention, the Special Rapporteur recommends schools to raise awareness, stimulate debate and encourage people to discuss the root causes of sectarian tensions and what role they can play in challenging

religious prejudice. In this regard, football clubs throughout the United Kingdom may also have a role to play in dealing with the sectarian behaviour of their own or visiting fans.

65. The Special Rapporteur would like to emphasize that tackling the sectarian polarization in Northern Ireland should not lead to disregarding the situation and concerns of religious minorities, for example with regard to physical attacks against their members, the siting of non-Christian places of worship and religious education in schools. Furthermore, the low number of followers of some minority faiths in Northern Ireland seems to make adherence to their dietary or worship practices difficult. Consequently, the Government needs to ensure that those wishing to worship, either individually or in community with others, are facilitated in doing so. Counter-terrorism measures

66. The Special Rapporteur notices a significant potential to draw some “lessons learnt” from the response to the sectarian tensions in Northern Ireland and to address new challenges in devising counter-terrorism measures in the United Kingdom. Whilst the Special Rapporteur is conscious of the fact that States are obliged to take effective measures in combating terrorist attacks, she has received allegations of the abuse of counter-terrorism laws which are largely perceived to target the Muslim population in the United Kingdom.

67. The Special Rapporteur is concerned about reports that Muslims are regularly subjected to screening of their personal data, house searches, interrogations and arrests solely because of their religious affiliation. Profiling techniques based on physical appearance seem to cause anger among many young Muslims and may lead to a lack of trust between the police and communities. Consequently, the alienation of certain ethnic and religious groups may also have negative implications for law-enforcement efforts and for the gathering of intelligence in the counter-terrorism context. The Special Rapporteur would like to reiterate the concluding observations of the Committee on the Elimination of Racial Discrimination, which encouraged the Government to implement effectively its decision to ensure that all “stops and searches” are recorded and that a copy of the record form be given to the person concerned.

68. Furthermore, several provisions in counter-terrorism legislation seem to be overly broad and vaguely worded. Under the principles of criminal law, criminal liability is limited to clear and precise provisions in the law in order to ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. Similar concerns have already been expressed by the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin, who specifically referred to terms and concepts in the Terrorism Act 2006, such as “indirectly encouraging” acts of terrorism and “glorification”, interpreted as including “any form of praise or celebration” (A/HRC/4/26/Add.1, para. 63). In addition, he reiterated the opinion that the possibility of 28 days of detention without charge is too long unless there is a regular judicial review of all aspects of the detention, including the reasons for it and any arguments the detainee may wish to present to contest them. The Special Rapporteur would also like to refer to Mr. Scheinin’s recent conclusions and recommendations with regard to terrorist-profiling practices, including profiling based on religion (A/HRC/4/26, paras. 83-89).

#### Religious education and collective worship

69. With regard to religious education, the authorities should pay specific attention to the contents of syllabuses in publicly funded schools. Furthermore, a non-discriminatory membership of relevant committees preparing such syllabuses seems vital to adequately present the various theistic, non-theistic and atheistic approaches. The Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination deemed that each State should promote and respect educational policies aimed at strengthening the promotion and protection of human rights, ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief as well as the right not to receive religious instruction inconsistent with his or her conviction (E/CN.4/2002/73, appendix, para. 4). Most recently, the Office for Democratic Institutions and Human Rights (ODIHR-OSCE) Advisory

Council of Experts on Freedom of Religion or Belief has prepared the “Toledo Guiding Principles on teaching about religions and beliefs in public schools” which may provide further useful guidance in this regard.

70. The Special Rapporteur notes with appreciation that parents may request that their children be wholly or partly excused from receiving religious education or attending at religious worship. She particularly welcomes the recent adoption of opt-out possibilities for pupils in the sixth form with regard to legal requirements of taking part in an act of collective worship in maintained schools. The right to freedom of religion or belief also includes the right not to manifest a religious belief. The parents or legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and children themselves also enjoy in their own right the freedom of religion or belief. In line with article 12, paragraph 1, of the Convention on the Rights of the Child, the children’s views should be given due weight in accordance with their age and maturity.

### Religious symbols

71. Concerning religious symbols and related school uniform policies, the Special Rapporteur welcomes the case-by-case approach by the authorities and courts. In its guidance, the Department for Children, Schools and Families emphasized that each case depends on the circumstances of the particular school and that the recent judgements do not mean that banning such religious dress will always be justified, nor that such religious dress cannot be worn in any school. With regard to the relevant international human rights standards and their scope the Special Rapporteur would like to refer to the set of general criteria concerning religious symbols as outlined in her last report to the Commission on Human Rights (E/CN.4/2006/5, paras. 51-60).

### Balancing of competing rights

72. Concerning the issue of balancing competing rights, the Special Rapporteur would like to emphasize that there exists no hierarchy of discrimination grounds. She welcomes the fact that the mandate of the recently established Commission for Equality and Human Rights includes promoting understanding and encouraging good practices concerning relations between members of groups who share a common attribute in respect of age, disability, gender, race, religion or belief and sexual orientation. The approach taken by the pertinent anti-discrimination legislation seems to be quite balanced and there are specific exemptions or transitional provisions for organizations relating to religion and belief. Ultimately, balancing different competing rights can only be decided on a case-by-case basis taking into account the particular circumstances and implications of the case.

### Provisions on offences related to religions

73. While noting that blasphemy charges have rarely been successful in court cases during the last decades, the Special Rapporteur is concerned at the continued existence of the blasphemy offence. The common law still imposes a strict liability on everybody who intends to make a statement on a Christian topic, even though he cannot know at that stage whether or not he will be found to have blasphemed. The Special Rapporteur shares the criticism that the blasphemy offence is discriminatory because it favours Christianity alone and lacks a mechanism to take account of the proper balance with freedom of expression. She also agrees with the Assembly of the Council of Europe which recommended in its resolution 1805 (2007) that the Committee of Ministers ensure that national law and practice in Council of Europe member States be “reviewed in order to decriminalize blasphemy as an insult to a religion”. The Special Rapporteur would like to reiterate that a useful alternative to blasphemy laws could be to fully implement the protection of individuals against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence according to article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

74. In this regard and in view of the Government’s declarations made upon ratification of the ICCPR (see above paragraph 12), the Special Rapporteur welcomes that the Racial and Religious Hatred Act 2006 has

recently entered into force in England and Wales. This closes the partial protection gap for people subjected to hatred because of their religion; they previously did not have the same protection under the criminal law as those targeted because of their race, especially since courts and tribunals have defined “race” so as to include Jews and Sikhs but no other religions. The Special Rapporteur notes with appreciation that the Racial and Religious Hatred Act 2006 also refers to non-religious believers in defining the meaning of “religious hatred” as “hatred against a group of persons defined by reference to religious belief or lack of religious belief”. Furthermore, the Act tries to strike the delicate balance with freedom of expression by banning threatening words and behaviour rather than restricting discussion, criticism or expressions of antipathy, dislike, ridicule or insult.

75. In order to allow a profounder analysis and to avoid misinformation about the application of the new provisions, the Special Rapporteur recommends that the Government should regularly publish statistics of prosecutions and convictions for incitement to religious or racial hatred. The Government also needs to monitor the situation closely in terms of the background of the victims and perpetrators. In addition, the Special Rapporteur encourages the introduction of similar legislation against racial and religious hatred in Scotland.

#### Definition of religion or belief

76. The Special Rapporteur would like to emphasize that it is not the Government’s role to look for the “true voices of Islam” or of any other religion or belief. Since religions or communities of belief are not homogenous entities it seems advisable to acknowledge and take into account the diversity of voices. The Special Rapporteur reiterates that the contents of a religion or belief should be defined by the worshippers themselves while manifestations may be limited according to article 18, paragraph 3, of the International Covenant on Civil and Political Rights, for example to prevent worshippers from violating the rights of others (A/HRC/4/21, paras. 43-47). She fully agrees with Lord Nicholls of Birkenhead who recently stated: “Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of ‘manifestation’ arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments.”

#### Vulnerable situation of women and converts

77. While the Special Rapporteur has not received any complaints of discriminatory State policies against women or converts on the basis of their religion or belief in the United Kingdom, yet many women are in a vulnerable situation within their own communities. The Special Rapporteur believes that equality must be all-encompassing and the argument by some religious leaders that traditions should override the rights of women is unacceptable.

78. Furthermore, the Special Rapporteur is concerned about the situation of converts who face problems with the community of their former religion. Even though some religious believers seem to accept a conversion only when it involves a change into their own religion such an approach does not acknowledge diversity and infringes on freedom of religion or belief. In that regard both article 18 of the Universal Declaration of Human Rights and article 9 of the European Convention on Human Rights unequivocally state that the right to freedom of thought, conscience and religion also includes the freedom to change a religion or belief. The Special Rapporteur would like to emphasize that theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief are protected.

#### Refugees and asylum-seekers

79. The Special Rapporteur was informed that asylum claims in the United Kingdom, including those based on well-founded fear of religious persecution, are subject to rigid scrutiny and that few applications are



successful in the initial decision or in the appeal procedure. Since there is no official data available on how many asylum-seekers sought asylum in the United Kingdom on grounds of religious persecution, further research and aggregated data collection may be useful in order to analyse the issues involved with regard to freedom of religion or belief. Such research by the Government, civil society or academia may also deal with the situation of individuals converting after their departure from their country of origin and their refugee *sur place* claims. The Special Rapporteur would like to reiterate that a post-departure conversion should not give rise to a presumption that the claim is fabricated and the immigration authorities should evaluate the genuineness of the conversion on a case-by-case basis taking into account the applicant's past and present circumstances. Furthermore, the Special Rapporteur stresses the importance of reliable interpretation services and the impartiality of interpreters in order to avoid serious disadvantages for the asylum-seekers.

80. With regard to country of origin information, the Special Rapporteur welcomes the fact that the Operational Guidance Notes as well as the Country of Origin Information Service are publicly available. For the whole asylum determination process it seems crucial not only to have accurate and objective but also up-to-date information on asylum-seekers' countries of origin. The Special Rapporteur would like to emphasize that case adjudicators should not exclusively base their decisions on these selected sources, especially when the situation in the country of origin or the region in question has allegedly changed since they were last updated. With regard to immigration detention or removal centres, especially when their management is contracted out to a private company, the Government should monitor if the religious needs of the detainees are in fact met.

## United States of America

### Introduction

During the period under review, the Special Rapporteur on the human rights of migrants visited the United States from 20 April to 18 May 2007 (please refer to document A/HRC/7/12/Add.2).

### Conclusions (A/HRC/7/12/Add.2, paras. 104-108)

104. Contrary to popular belief, United States immigration policy did not become more severe after the terrorist attacks on September 11. Drastic changes made in 1996 have been at work for more than a decade, affecting communities across the nation and recent policy changes simply exacerbate what was put in motion then. Also, contrary to popular belief, these policies do not target only undocumented migrants - they apply to citizens born in the United States of undocumented parents and long-term lawful permanent residents (or green card holders) as well.

105. Not only have immigration laws become more punitive - increasing the types of crimes that can permanently sever a migrant's ties to the United States - but there are fewer ways for migrants to appeal for leniency. Hearings that used to happen in which a judge would consider a migrant's ties to the United States, particularly their family relationships, were stopped in 1996. There are no exceptions available, no matter how long an individual has lived in the United States and no matter how much his spouse and children depend on him for their livelihood and emotional support.

106. Throughout the history of the United States, many different kinds of non-citizens have been made subject to mandatory detention. People with lawful permanent resident status (or green card holders), including those who have lived lawfully in the United States for decades, are subject to deportation. So are other legal immigrants - refugees, students, business people, and those who have permission to remain because their country of nationality is in the midst of war or a humanitarian disaster. Undocumented non-citizens are also subject to mandatory detention and deportation regardless of whether they have committed a crime.

107. A primary principle of United States immigration law is that United States citizens can never be denied entry into the country; neither can they ever be forcibly deported from the United States. By contrast, non-citizens, even those who have lived in the country legally for decades, are always vulnerable to mandatory detention and deportation.

108. In the wake of Hurricane Katrina, migrant workers from across the United States travelled to New Orleans. Ultimately, the voices of workers in post-Katrina New Orleans demonstrate that the actions and inactions of federal, state, and local governments and the actions of the private reconstruction industry have created deplorable working and living conditions for people striving to rebuild and return to the city. Because these workers are migrant, undocumented, and displaced they have little chance to hold officials and private industry accountable (e.g., many cannot vote, and displaced workers in New Orleans continue to experience barriers to voting) except through organized, collective action.

### Recommendations (A/HRC/7/12/Add.2, paras. 109-131)

109. The Special Rapporteur would like to make the following recommendations to the Government.

### On general detention matters

110. Mandatory detention should be eliminated; the Department of Homeland Security should be required to make individualized determinations of whether or not a non-citizen presents a danger to society or a flight risk sufficient to justify their detention.

111. The Department of Homeland Security must comply with the Supreme Court's decision in *Zadvydas v. Davis* and *Clark v. Martinez*. Individuals who cannot be returned to their home countries within the foreseeable future should be released as soon as that determination is made, and certainly no longer than six months after the issuance of a final order. Upon release, such individuals should be released with employment authorization, so that they can immediately obtain employment.

112. The overuse of immigration detention in the United States violates the spirit of international laws and conventions and, in many cases, also violates the actual letter of those instruments. The availability of effective alternatives renders the increasing reliance on detention as an immigration enforcement mechanism unnecessary. Through these alternative programmes, there are many less restrictive forms of detention and many alternatives to detention that would serve the country's protection and enforcement needs more economically, while still complying with international human rights law and ensuring just and humane treatment of migrants.

### Create detention standards and guidelines

113. At the eighty-seventh session of the Human Rights Committee in July 2006, the United States Government cited the issuance of the National Detention Standards in 2000 as evidence of compliance with international principles on the treatment of immigration detainees. While this is indeed a positive step, it is not sufficient. The United States Government should create legally binding human rights standards governing the treatment of immigration detainees in all facilities, regardless of whether they are operated by the federal Government, private companies, or county agencies.

114. Immigration detainees in the custody of the Department of Homeland Security and placed in removal proceedings, should have the right to appointed counsel. The right to counsel is a due process right that is fundamental to ensuring fairness and justice in proceedings. To ensure compliance with domestic and international law, court-appointed counsel should be available to detained immigrants.

115. Given that the difficulties in representing detained non-citizens are exacerbated when these individuals are held in remote and/or rural locations, U.S. Immigration and Customs Enforcement (ICE) should ensure that the facilities where non-citizens in removal proceedings are held, are located within easy reach of the detainees' counsel or near urban areas where the detainee will have access to legal service providers and pro bono counsel.

### Deportation issues impacting due process and important human rights

116. United States immigration laws should be amended to ensure that all non-citizens have access to a hearing before an impartial adjudicator, who will weigh the non-citizen's interest in remaining in the United States (including their rights to found a family and to a private life) against the Government's interest in deporting him or her.

### Detention/deportation issues impacting unaccompanied children

117. The Government should urge lawmakers to pass the Unaccompanied Alien Child Protection Act of 2007 reintroduced in March 2007.

118. Children should be removed from jail-like detention centres and placed in home-like facilities. Due care should be given to rights delineated for children in custody in the American Bar Association “Standards for the Custody, Placement, and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States”.

119. Temporary Protected Status (TPS) should be amended for unaccompanied children whose parents have TPS, so they can derive status through their parents.

#### Situation of migrant women detained in the United States

120. In collaboration with legal service providers and non-governmental organizations that work with detained migrant women, ICE should develop gender-specific detention standards that address the medical and mental health concerns of migrant women who have survived mental, physical, emotional or sexual violence.

121. Whenever possible, migrant women who are suffering the effects of persecution or abuse, or who are pregnant or nursing infants, should not be detained. If these vulnerable women cannot be released from ICE custody, the Department of Homeland Security should develop alternative programmes such as intense supervision or electronic monitoring, typically via ankle bracelets. These alternatives have proven effective during pilot programmes. They are not only more humane for migrants who are particularly vulnerable in the detention setting or who have family members who require their presence, but they also cost, on average, less than half the price of detention.

#### Judicial review

122. The United States should ensure that the decision to detain a non-citizen is promptly assessed by an independent court.

123. The Department of Homeland Security and the Department of Justice should work together to ensure that immigration detainees are given the chance to have their custody reviewed in a hearing before an immigration judge. Both departments should revise regulations to make clear that asylum-seekers can request these custody determinations from immigration judges.

124. Congress should enact legislation to ensure that immigration judges are independent of the Department of Justice, and instead part of a truly independent court system.

125. Families with children should not be held in prison-like facilities. All efforts should be made to release families with children from detention and place them in alternative accommodation suitable for families with children.

#### On migrant workers

126. The Government should ensure that state and federal labour policies are monitored, and their impact on migrant workers analysed. Policymakers and the public should be continually educated on the human needs and human rights of workers, including migrant workers. In this context, the Special Rapporteur strongly recommends that the United States consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

127. A human services infrastructure should be built in disaster-affected communities to comprehensively meet the needs of workers facing substandard housing and homelessness, wage theft, unsafe working conditions and health issues.

128. Effective oversight of the enforcement of applicable labour laws by state and federal agencies should be ensured.

129. Existing health and safety laws should be assiduously enforced in order to curb exploitative hiring and employment practices by contractors.

130. Improved health and safety conditions should be ensured in places that are known to employ migrant workers, compensation for workers and health care for injured migrant workers should be provided, and the significant incidences of wage theft combated.

131. Local law enforcement and federal immigration authorities must cease harassing and racially profiling migrant workers. Law enforcement should instead focus on helping to promote the rights of workers, including the rights of migrant workers.

## Occupied Palestinian Territory

### Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (OPT) visited the country from 22 September to 3 October 2007 (please refer to document A/HRC/7/17 and A/HRC/10/20).

A/HRC/7/17

There is no specific section on recommendations regarding the Occupied Palestinian Territory. However, recommendations are contained in the text of the above-mentioned report.

**ANNEX I**  
**ANNUAL REPORTS**

**Conclusions and recommendations of the Special Rapporteur on the right to food as a component to the right of adequate housing,**

A/HRC/7/16

**Conclusions and recommendations**

93. The overall assessment of the Special Rapporteur, after seven years as mandate holder, is that there is a severe and growing global housing and land rights crisis that needs to be given priority on the global agenda and accorded greater attention. In this context, in view of the issues raised in this report and in addition to the recommendations made in all his previous reports, the Special Rapporteur wishes to present a number of general and specific recommendations addressed to the Human Rights Council, States and the international community.

General recommendations (A/HRC/7/16, paras.94-98)

94. States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.

95. The Special Rapporteur urges States to take concrete measures, including through legislation and other regulatory mechanisms, to counter forced evictions; urban “apartheid” and segregation; land-grabbing; growth of the “land mafia” and land cartels; unbridled property speculation; and indiscriminate escalation of housing prices.

96. The Special Rapporteur recommends institutionalizing inter-ministerial coordination so as to ensure that the formulation and implementation of national and global economic policies, such as those in the areas of trade, investment, finance, structural adjustment and debt, do not cause the State to ignore human rights obligations and aggravate living conditions for those people and communities facing discrimination and segregation with regard to housing, land and access to related civic services.

97. Legislation at all levels should reflect and effectively implement the rights to information and participation, which are crucial to the realization of the right to adequate housing.

98. The Council may wish to express its support for the joint UN-Habitat/OHCHR Housing Rights Programme, emphasizing the need for efforts to combat forced evictions and homelessness, including by inviting States to provide financial support.

Homelessness

99. The Special Rapporteur wishes to reiterate the recommendations on homelessness contained in his 2005 annual report, in particular the following:

(a) States must address holistically the structural causes of homelessness and integrate appropriate and accessible support services, including for health, psychological, social and work-related support, with particular attention to homeless women and children;

(b) Laws and policies should recognize that homeless people have a justiciable right to adequate housing, and should not criminalize the homeless.

### Forced evictions

100. In his thematic report on forced evictions, the Special Rapporteur made a number of recommendations. In addition, the Special Rapporteur:

- (a) Urges States, donors, international and regional financial institutions and private investors not to engage, whether directly or indirectly, in projects that may result, through forced evictions, in the violation of the right to adequate housing of individuals or communities;
- (b) Recommends States, in view of the growing incidence of forced evictions worldwide, to incorporate the Basic principles and guidelines on development-based evictions and displacement into national laws and policies governing housing and land issues, including resettlement policies, and encourages States to invite the Special Rapporteur to observe their practical application at the country level;
- (c) Recommends the Council to ensure wide dissemination of the Basic principles and guidelines and inclusion of the issue of development and market-induced displacements and evictions in the elaboration of mandates of relevant special procedures of the Council, in particular on the rights of indigenous peoples, internally displaced persons, violence against women, and the right to food;
- (d) Strongly recommends the further elaboration of assessments of the impact of evictions, on the basis of these principles and guidelines. Such assessments need to include both material and non-material losses. Reference can be made in this task to the “loss matrix” developed by the Special Rapporteur in collaboration with civil society.

### Discrimination

101. The Special Rapporteur reiterates the recommendations contained in his 2002 report, in particular to assist in the follow-up to recommendations and commitments made at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and urges that:

- (a) Legislative measures that prohibit racial and other discrimination in all areas of housing be enacted or strengthened;
- (b) Policies, programmes, and budgetary and financial allocations promote equal access to civic services essential to the realization of the right to adequate housing, including potable water, electricity and sanitation, and that policies that result in discriminatory access are reversed;
- (c) Policies and laws are formulated to address multiple discrimination facing minority, indigenous and low-income communities in their struggle to exercise their right to adequate housing and land.

### The human right to water and sanitation

102. In view of the importance of developing further analytical, investigative and monitoring work on water and sanitation, the Special Rapporteur:

- (a) Urges States to take into account the contents of the general comment of the Committee on Economic, Social and Cultural Rights on the right to water<sup>68</sup> and, in accordance with Commission on Human Rights resolution 2002/21, to give full effect to housing rights including the right to water, giving particular attention to women, children, communities that have been historically discriminated against and marginalized, and those living in extreme poverty;
- (b) Also urges States to guarantee universal access to basic human rights to water, sanitation and other essential services including electricity, and to exercise the utmost caution when contemplating policies that would lead to the privatization of water, sanitation, and electricity services;
- (c) Invites the Council to consider appointing a Special Rapporteur on the right to water and sanitation.



### Affordability

103. Given that the issue of affordability of housing will most probably worsen in the coming years, resulting in increased denial of the right to adequate housing, the Special Rapporteur calls upon the Human Rights Council to propose a human rights approach to this problem including through:

- (a) Urging States to devote particular attention to the question of ensuring, where possible, progressive increases in budgetary allocation to housing;
- (b) Requesting States to increase the availability of social housing and reversing any policies that lead to the reduction of housing subsidies for low-income groups;
- (c) Urging States to adopt appropriate measures to regulate public and private rental markets and the mortgage market, so that no household has to pay more than 30 per cent of its income for housing, as higher housing costs can compromise enjoyment of other basic human rights such as health, food, education and clothing.

### Access to land

104. On many occasions, the Special Rapporteur has drawn the attention of the Council to the unfinished agenda of recognizing the linkage between access to land and human rights. Therefore, the Council should:

- (a) Reaffirm the right to equal and non-discriminatory access to land and recognize that in many circumstances meeting human rights obligations will require improving access to land, particularly for the rural poor in developing countries;
- (b) Consider the relationship between the right to land and congruent human rights and their implementation, in particular in regard to adequate housing and the right to food and work as a means to combat poverty, discrimination, violence, evictions and displacement;
- (c) Consider holding an expert seminar to develop strategies for the legal recognition of land as a human right, including the protection of individual and collective land rights of indigenous peoples, peasants, the landless and other groups that are dependent on and derive their identity and livelihood from land and land-based resources;
- (d) Request States to give priority to agrarian and land reform in rural areas and to improving equal access to land and wealth in both urban and rural areas.

### Rural areas

105. As the Special Rapporteur has pointed out since the inception of the mandate, there is a growing neglect of the human rights of rural populations and the development of rural areas. It is therefore imperative that:

- (a) States collaborate with international and regional development agencies, donors and civil society to develop integrated rural development strategies, with policies and programmes that have the aim of sustaining rural livelihoods, with a focus on rural employment generation and local infrastructure development;
- (b) States and international organizations take steps to ensure that rural development, including of remote areas and in cooperation with local communities, is integrated with national housing policy and strategy, and that improvement in housing and living conditions (including water and sanitation) is linked with employment and education opportunities.

### Natural disasters and humanitarian emergencies

106. In regard to natural disasters, humanitarian emergencies and post-disaster reconstruction, the Special Rapporteur:

- (a) Recommends that the Council consider promoting disaster preparedness and relief and rehabilitation as essential to the enjoyment of human rights;
- (b) Urges that international human rights standards and principles be incorporated into all relief and rehabilitation efforts, including those of the international community, international financial institutions and

non-governmental organizations, in order to facilitate the speedy transition from temporary shelter to permanent housing for those affected;

(c) Urges States to ensure implementation of the rights to information and participation and to seek the prior informed consent of victims or beneficiaries in all stages of relief and rehabilitation, including the provision of shelters and permanent housing;

(d) Urges States to ensure that relief and rehabilitation efforts are gender-sensitive and culturally appropriate.

#### Women and adequate housing

107. The Human Rights Council must continue to focus on and promote women's rights to adequate housing, land, property and inheritance. The Special Rapporteur has in his three reports on this issue made a number of recommendations. In addition, he:

(a) Urges States to guarantee women's legal security of tenure over housing and land, including the recognition of women's equal rights to housing, property and land;

(b) Recommends that the Council reflect on the need for a Special Rapporteur on laws that discriminate against women and continue mainstreaming gender and women's rights in its work;

(c) Requests more collaborative work between special procedures mandate holders in this regard, including expanding the work on the link between women's right to adequate housing and the violence they face in and around the home;

(d) Urges the Council and the next Special Rapporteur on adequate housing to continue focusing on women and housing, including by: (a) further analysis and recommendations on the policy implications of an intersectional approach; (b) formulating strategies, in collaboration with States and civil society, to close the increasing gap between recognition and implementation of women's rights to housing and land; and (c) continuing collaborative work with the Committee on the Elimination of Discrimination against Women towards a general recommendation on women's right to adequate housing and land.

#### Children and adequate housing

108. The Special Rapporteur calls upon all States and concerned parties to address the deteriorating global state of housing and homelessness of children around the world and make it a priority concern requiring urgent action. He recommends that the Council:

(a) Urge the next Special Rapporteur on adequate housing to continue close collaboration with the Committee on the Rights of the Child, in particular in view of the possible preparation of a general comment which may address issues such as the link between violence and the child's right to adequate housing, the safety of children at home, and the impact of evictions on children;

(b) Request the next Special Rapporteur on adequate housing to analyse the impact of inadequate housing on children and their human rights, and establish specific recommendations in this regard, including policy measures to mitigate the psychological impact of evictions and other violations of the right to adequate housing on children.

#### Indigenous peoples and adequate housing

109. The Special Rapporteur urges States to:

(a) Ensure the right to adequate housing for indigenous peoples, respecting their particular cultural housing and land needs;

(b) Recognize the historical rights that indigenous people have over their homes and territories;

(c) Assure indigenous peoples a real participatory role in and control over, to the greatest extent possible, their affairs, including management, use and ownership of their natural resources;

110. In addition, the Special Rapporteur believes that particular attention should be given by the United Nations to indigenous peoples living in rural areas, and the inadequate living and housing conditions forcing

them into urban areas, as well as the housing, living conditions, evictions and discrimination that they face in urban areas.

### Groups requiring special attention

111. The Human Rights Council must urge States to ensure that their national housing policies guarantee the provision of housing and proper support services to address the requirements of disadvantaged groups, including persons living with psychosocial and other disabilities.

112. In addition, States should adopt specific legal provisions and programmes to eliminate barriers to physical accessibility in existing structures and make compulsory the elimination of these barriers in all new construction, as required by the new Convention on the Rights of Persons with Disabilities.

### Civil society

113. Given the critical role played by civil society in all aspects of advocacy, analysis, monitoring and implementation of the right to adequate housing, the Special Rapporteur calls upon the Human Rights Council to:

- (a) Closely monitor the situation of human rights defenders and representatives of victims of housing and land rights violations, and take the necessary measures to ensure that claims for adequate housing and land are not criminalized;
- (b) Acknowledge the critical nature of the work being undertaken by campaigns and movements on housing and land rights and, given the increased stress under which civil society actors operate, ensure that sufficient spaces are made available for meaningful dialogue with civil society and those directly affected by violations of the right to adequate housing.

### Monitoring implementation of the right to adequate housing

114. As the Special Rapporteur has emphasized on many occasions, it is of the utmost importance that implementation of the right to adequate housing is objectively evaluated. In this context, he:

- (a) Urges States to adopt indicators and statistics on adequate housing<sup>70</sup> and establish national benchmarks consistent with their human rights obligations, organize follow-up initiatives at country level and undertake further collaboration with OHCHR and UN-Habitat on indicators on the right to adequate housing;
- (b) Urges States, in collaboration with the next mandate holder, OHCHR and UN-Habitat, to review the questionnaires developed by the Special Rapporteur (on the right to adequate housing, and on women and housing), with a view to including new issues in such monitoring tools;
- (c) Urges United Nations agencies and field presences to play a much more active role in monitoring implementation of the right to adequate housing and supporting States in their consideration of the recommendations of treaty bodies and Special Rapporteurs.

### Collaboration

115. The Special Rapporteur believes that collaborative work between mandate holders and between different parts of the United Nations human rights system is crucial and should be strengthened. The support of the Council is critical in this respect. The Council may wish to:

- (a) Request the next mandate holder on adequate housing to work with all relevant mandate holders through joint missions, communications and other initiatives to reinforce, inter alia, the indivisibility of all human rights and their linkage with the right to adequate housing;
- (b) Urge the next mandate holder to continue the dialogue with all relevant treaty bodies, including initiating work on relevant matters with the Human Rights Committee and the Committee against Torture.

## **Conclusions and recommendations of the Working Group on Arbitrary Detention**

**A/HRC/7/4**

### **Conclusions (A/HRC/7/4, paras.74-79)**

74. The Working Group welcomes the cooperation it has enjoyed from States in the discharge of its mandate, which was renewed for another three-year period on 28 September 2007 by Human Rights Council resolution 6/4. In the great majority of cases in which the Group adopted an Opinion during its three sessions in 2007, the Government concerned had provided submissions regarding the case.

75. The Working Group welcomes the cooperation on the part of Governments that extended invitations to the Group for visits. Thanks to their cooperation, the Working Group was able to visit Norway, Equatorial Guinea and Angola in 2007. The Working Group has also asked to visit Afghanistan, Ethiopia, Guinea Bissau, India, the Libyan Arab Jamahiriya and Turkmenistan. The Working Group decided during its fiftieth session to request invitations for a visit to Egypt, Malaysia, the Russian Federation, Saudi Arabia, Thailand, Ukraine and Uzbekistan.

76. The Working Group further discusses several issues which have given rise to concern during the period reported upon and addresses recommendations to States. Concerning the detention of non-citizens, the Working Group identifies several shortcomings it has observed in connection with detention of asylum-seekers and illegal immigrants. It calls upon States to make use of detention only as a last resort and to explore alternatives to detention.

77. The Working Group deplores the situation of vulnerable groups in detention susceptible to sexual abuse by co-inmates and correctional services staff. It reminds States of their duty to protect and the necessity of a functioning penitentiary system, with well-trained staff to prevent such abuses and no impunity from prosecution.

78. In view of events throughout 2007, the Working Group reiterates its concerns over deprivation of liberty occurring during states of emergency and over recourse to military, special or emergency courts, especially in the context of countering terrorism, and recalls some of the applicable international human rights norms and standards which must be adhered to at all times.

79. Finally, the Working Group, drawing on its experience, emphasizes the necessity of having a proper registration system in place in every detention facility to safeguard against arbitrary deprivation of liberty. The Working Group stresses that the time limit for pretrial detention should be established by law and that, upon expiry of this time limit or of a term of imprisonment, prison authorities should be competent and obliged to release detainees or prisoners automatically without specific authorization by another State authority.

### **Recommendations (A/HRC/7/4, paras.80-84)**

#### **Detention of non-citizens**

80. Regarding detention of asylum-seekers and illegal immigrants, the Working Group addresses the following recommendations to States:

(a) The Working Group considers that an in-depth and urgent deliberation by the Human Rights Council is required to seek effective alternatives to prevent violations of rights guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights affecting the large numbers of asylum-seekers and illegal immigrants in detention around the world, in view of their specific vulnerability. To that effect a seminar with the participation of all stakeholders involved should be organized under the auspices of the Office of the United Nations High Commissioner for Human Rights;

(b) The Working Group requests States to use detention of asylum-seekers and illegal immigrants only as a last resort, and encourages them to explore alternatives to detention, such as supervised release, release on bail, designated residence or regular reporting to authorities.

#### Vulnerable groups in detention which are susceptible to sexual abuse

81. As to vulnerable groups in detention which are susceptible to sexual abuse, the Working Group makes the following recommendations:

- (a) States in which sexual abuse of detainees by fellow inmates or by State authorities is reported should take measures as a matter of urgency to ensure that juveniles are held separate from adults and women separate from men. Custodians of female prisoners should be women;
- (b) States should organize their penitentiary systems in such a way as to guarantee that sexual abuses in detention do not occur. This includes appropriate training of detention facility staff;
- (c) Victims of such abuses should enjoy access to an effective complaints procedure before an independent oversight body with decision taking powers;
- (d) States should take the necessary steps to make sure that impunity for sexual abuse does not prevail.

#### Detention in the context of counter-terrorism measures and in states of emergency

82. With regard to detention in the context of counter-terrorism measures and in states of emergency the Working Group recommends that:

- (a) States of emergencies must only be imposed, and measures taken thereunder, including deprivation of liberty, must only be carried out, in strict conformity with article 4 of the International Covenant on Civil and Political Rights and in stringent compliance with the principle of proportionality. The right to habeas corpus must not be suspended;
- (b) Governments should duly follow release orders rendered by competent judicial authorities and refrain from re-detaining the individual concerned on the same grounds, also during states of emergency;
- (c) Countries in legal transition, where civilians may still be tried under military jurisdiction, should provide for an independent and civil judicial authority before which civilians are able to challenge the competence of the military court.

#### Demarcation of competences for release of detainees

83. Regarding the demarcation of competences between authorities for release of detainees, particularly pre-trial detainees, the Working Group addresses the following recommendations to States:

- (a) States, which have not done so yet, should establish maximum time limits for pre-trial detention in their domestic legislation;
- (b) The Working Group urges States to take appropriate measures, if necessary, to ensure that warrants for detention on remand clearly establish the date of the expiry of the applicable time limit;
- (c) States should ensure that domestic legislation provides that prison authorities have the power and are obliged to release pre-trial detainees or convicted prisoners automatically upon expiry of the prescribed time limit, without a specific release order by a judge, magistrate, prosecutor, or other State authority which is competent to order detention on remand or imprisonment, in compliance with the international human rights, norms and standards the respective States have undertaken to observe.

#### Registration at detention facilities

84. In addition to the requirements of section 7 (1) of the Standard Minimum Rules for the Treatment of Prisoners relating to registration books at detention facilities, the Working Group is bound to encourage States to further include the following information on the detainee: (i) the signature of the detainee upon entry, transfer or release; (ii) the prescribed maximum duration of detention; (iii) date and time of transfer to another detention facility, if applicable, and the authority therefore; and (iv) if applicable, the date when the prisoner is eligible for early release on probation.

## **Conclusions and recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography**

**A/HRC/7/8**

### **Conclusions** (A/HRC/7/8, paras.70-72)

70. The Special Rapporteur would like to warmly thank all those who responded to the questionnaire. The Special Rapporteur regrets that so few Member States have provided on-time answers to his questionnaire, and notes with concern that the number of replies declined from last year, which was already weak. This report does not pretend to give a comprehensive analysis of the issue discussed; its aim is to rather highlight positive examples of national policies and strategies as well as to discuss such examples of good practices developed by international organizations, NGOs and the civil society in assistance and rehabilitation programmes for child victims of commercial sexual exploitation and trafficking. Only relevant selections of the experiences and initiatives on which information was received have been outlined in this report.

71. The Special Rapporteur notes that, while several activities and programmes have been put in place in the countries that provided an answer to the questionnaire, as well as several others where international organizations and NGOs have taken positive initiatives, in general separate rehabilitation and assistance programmes for child victims of commercial sexual exploitation and trafficking are not set up and available. As such, these programmes are either available through other assistance programmes for children who are victims of domestic violence or with rehabilitation programmes for trafficked adult women victims of sexual exploitation. This lack of specific assistance and reintegration programmes and facilities for minors who are victims of commercial sexual exploitation and trafficking can be a cause of re-victimization and affect their vulnerability towards their exploiters and traffickers.

72. The Special Rapporteur calls on States to establish distinct facilities and programmes for these minors, because of the specific nature of their traumatic experience and crimes they have been victims of, but also because of their particular needs for a successful rehabilitation in their families if possible and into society. These rehabilitation facilities and programmes should not be the only assistance available, but part of a larger network of services, both public (through the State and local social services) and private (NGOs and civil society initiatives). Therefore, the Special Rapporteur calls for a more coordinated, comprehensive, and global approach, where the different State institutions as well as NGOs and the civil society have a role to play. Outreach on prevention and educative programmes should be essential components of this approach.

### **Recommendations** (A/HRC/7/8, paras.73-78)

73. While noting that most States which responded to the questionnaire have put in place different programmes and facilities for children who are victims of commercial sexual exploitation and trafficking, the Special Rapporteur observes that these programmes and facilities often encompass either adult victims of commercial sexual exploitation and trafficking or child victims of domestic abuse and violence. While reiterating the importance of offering to these two diverse groups of victims appropriate rehabilitation and assistance programmes and facilities, the Special Rapporteur nevertheless is of the opinion that children who are victims of commercial sexual exploitation, because of the very nature of the harm done to them and the situation which they face after being rescued from the hands of their exploiters, are in need of special, separate programmes and facilities catering specifically to their needs. They should not be together with victims of domestic abuse and violence or with adults. The Special Rapporteur notes that in the absence of the programmes and facilities, children victims tend to be more vulnerable to exploitation by organized criminal groups.

74. Although the number of identified children victims of commercial sexual exploitation and trafficking may, in several countries, be limited, the Special Rapporteur calls upon States, together with reliable and credible

NGOs and civil society actors, to set up specific rehabilitation and assistance programmes for children and minors who are victims of sexual commercial exploitation and trafficking. These programmes and facilities may take different forms and should be adapted to the local and cultural contexts, be it a closed shelter, rehabilitation activities given in the form of outpatient assistance or educational programmes, all depending on the situation and magnitude of such children victims. If there are no reported cases of minors who are victims of sexual commercial exploitation and trafficking, the Special Rapporteur recommends the creation of a State fund, which could be made readily available when such assistance and rehabilitation measures become required.

75. If States should opt for the shelter model as part of their assistance and rehabilitation facilities, the Special Rapporteur recommends that such shelters should, at a minimum, provide the following services and facilities:

- (a) A place of residence with decent living conditions and of small dimensions;
- (b) Appropriate food and clothes;
- (c) Full medical aid, including hospital treatments and surgeries, if needed;
- (d) Competent and specialized staff;
- (e) Psychological counselling;
- (f) Education facilities, to allow children to follow the appropriate school curriculum;
- (g) Legal aid and court representation, if the victim so requires;
- (h) Translation and interpretation services in a language the victim understands, if needed;
- (i) Personalized care for the best interests of each child;
- (j) Participation in appropriate recreational activities and diverse programmes of rehabilitation and reintegration. These could include other education programmes, professional skills-gaining and support in finding employment, when relevant;
- (k) Security needs to be ensured for the participants inside but also outside of the shelter, as the minor victims are still vulnerable to their exploiters and traffickers who often belong to criminalized groups;
- (l) Participation of civil society should also be encouraged and facilitated.

76. Regarding the issue of funding these assistance and rehabilitation programmes, the Special Rapporteur believes that, although the magnitude of the problem may not appear to be huge in most countries, this phenomenon requires constant monitoring with assistance readily available to the victims, therefore he recommends all States:

- (a) To incorporate in their national legislation and budget provisions for funding of State and NGO programmes and activities aimed at the assistance and rehabilitation of children who are victims of sexual commercial exploitation and/or trafficking;
- (b) To establish specific protocols and work plans which set up standards of the programmes and activities for the assistance and rehabilitation of children victims of sexual commercial exploitation and/or trafficking;
- (b) To set up funds for recognized and established NGOs and other civil society actors as implementing agencies and partners to implement their activities, programmes and facilities for children who are victims of sexual commercial exploitation and trafficking;
- (c) To include in the rehabilitation programmes a minimum of three years of follow-up and monitoring of the assistance and treatment provided to the minors who are victims for a full recovery, as experience shows these victims have suffered considerably and need long-term therapies.

77. Taking into account that the examples of best practices are as of today still insufficient, the Special Rapporteur calls upon the academic community, NGOs and civil society and the specialized agencies of the United Nations system to elaborate norms and standards to serve as models to be used when establishing rehabilitation and assistance programmes for children and minors victims of sexual commercial exploitation and trafficking.

78. The Special Rapporteur stresses finally that educational programmes as well as awareness-raising activities are essential in the fight against commercial sexual exploitation and trafficking of children. He therefore calls upon States:

- (a) To develop awareness-raising campaigns among teachers, school officials, the tourism industry and law-enforcement officials on the issues of commercial sexual exploitation and trafficking of children;
- (b) To raise awareness among law-enforcement officials on the need to work together and cooperate fully and totally when investigating cases of children who are victims of commercial sexual exploitation and trafficking;
- (c) To ensure that the school curriculum includes child rights education that addresses these issues and provide resources available to help should children be confronted with such situations. Education on programmes and resources available is an essential tool to prevent children from becoming victims of such crimes and should be made available at all school levels.

## **Conclusions and recommendations of the Working Group on Enforced or Involuntary Disappearances**

### **A/HRC/7/2**

#### **Areas of concern, conclusions and recommendations (A/HRC/7/2, paras.421-433)**

421. In 2007, the Working Group transmitted 629 newly reported cases of disappearance to 29 Governments, 84 of which allegedly occurred during 2007. The Working Group used the urgent action procedure for 65 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 224 cases of disappearance. The Working Group discontinued 6 cases. The Working Group is grateful for the cooperation received from a number of Governments. Nevertheless, it remains concerned that, of the 78 States with outstanding cases, some Governments (Burundi, Guinea, Israel, Mozambique, Namibia and Seychelles, as well as the Palestinian Authority), 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, the resolutions of the General Assembly, the Commission on Human Rights and its successor, the Human Rights Council. The cooperation of Governments is indispensable to discovering the fate or whereabouts of disappeared persons around the globe.

422. The Working Group is still very concerned about the phenomenon of underreporting. The Working Group considers that cases of disappearances are happening in certain parts of the world, without being reported to the Working Group. This is owing to a variety of reasons, including that in a number of countries, particularly in those which have been through internal armed conflict, national institutions, including the judicial system, as well as security forces have collapsed. The underreporting phenomenon may also be due to conditions of poverty, lack of effective civil society organizations and activities, policies limiting the activities of NGOs, harassment of human rights defenders, prosecutors and judges, families and victims of disappearances. The Working Group strongly urges States to establish solid legal frameworks that guarantee NGOs to undertake their work freely.

423. In various cases, countries that have gone through or are going through a difficult situation of internal disorder or with high rates of criminality, sometimes use the armed forces to undertake police activities, under the excuse that the police forces are incapable of coping with the maintenance of public order. The Working Group is convinced that the duties of the armed forces are different from those of the police force. In a large number of cases of reported disappearances worldwide, the armed forces themselves are reported to be responsible for the disappearances.

424. The Working Group received information from a number of countries indicating that the investigating authorities are themselves part of the military forces. In addition, trials are being held before military tribunals, contrary to article 16, paragraph 2, of the Declaration. The Working Group finds that this does not guarantee the independence of the investigations or the impartiality of the courts, particularly when the presumed perpetrator is part of the military.



425. The Working Group received information that in some cases, investigations were suspended or closed, producing a situation that gives rise to impunity, in contradiction to article 18 of the Declaration. Governments are reminded of their obligations under article 13, paragraph 6, of the Declaration, which provides that investigations should be able to be conducted for as long as the fate of the victim remains unclarified.

426. In the same vein, the Working Group received allegations concerning the enactment or existence of amnesty laws. These laws not only have granted the benefit of grace to presumed perpetrators of grave human rights violations, including disappearances, but also exclude the possibility to conduct investigations that could lead to the fair implementation of justice and the right to truth. On the other hand, the Working Group also received reports on countries where laws of this nature have been declared invalid, an action that the Working Group considers highly commendable.

427. During this year, the Working Group adopted an important general comment intended to give an interpretation of the definition of enforced disappearance that is most conducive to the protection of the victims and their families. One of the issues highlighted by the general comment, which is a main concern to the Working Group, is the practice of short-term disappearances. Under international human rights law, if a detention, even if short-term, is followed by an extrajudicial execution, it is considered an enforced disappearance proper, as long as such deprivation of liberty was carried out by governmental agents or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, and, subsequent to the detention, or even after the execution was carried out, the Government refuses to disclose the fate or whereabouts of the victim or refuses to acknowledge the act having been perpetrated at all.

428. The Working Group received reports of the enactment of legislation in a number of countries which weakens guarantees of due process and personal freedom, as part of the strategy against terrorism. The Working Group also received allegations of persons being arrested and kept in secret detention centres, sometimes in a country different from the country where they were arrested, and where they may be allegedly tortured. In many instances, their whereabouts remain unknown for a prolonged period of time. The Working Group reminds Governments to comply with their obligations under the Declaration, particularly with regards to articles 7 (no circumstances whatsoever may be invoked to justify enforced disappearances), 8 (no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that s/he would be in danger of enforced disappearance), 9 (right of all persons deprived of their liberty to a prompt and effective judicial remedy), and 10 (any person deprived of liberty shall be held in an officially recognized place of detention, accurate information on the detention and transfer of such persons should be made promptly available to their families and counsel, and an official up-to-date register of detainees must be available in every place of detention).

429. The Working Group reiterates that, in many cases where disappearances arise from conditions of armed conflict not of an international character, the way to an enduring and sustainable solution is for the international community to take concerted action aimed at tackling the root causes that give rise to such internal situations. It is crucial that early warning indicators pointing to the occurrence of or potential for disappearances be monitored with a view to preventing this phenomenon. The Working Group is convinced that well-thought-out policies and actions directed at breaking the vicious cycle of increasing poverty that gives rise to conflict are among the essential preventive measures to consider in this regard.

430. The preventive measures noted above are particularly aimed at democratizing the structures of governance, making human rights the cornerstone of public policy, and empowering civil society organizations to act as watchdogs. Governments should take steps to create and support specific bodies and institutions charged with addressing disappearances.

431. The principles of the Declaration should be disseminated through the mass media for the purpose of public education.

432. These principles, along with all other human rights norms, should be incorporated in the curriculum of the police academies and training programmes of security forces.

433. The Working Group reiterates its encouragement to the Office of the United Nations High Commissioner for Human Rights to promote the Declaration and to include in its programme of technical cooperation the strengthening of national capacities for the prevention and eradication of disappearances.

## **Recommendations of the Special Rapporteur on the right to education**

### **A/HRC/8/10**

#### General Recommendations

144. The Special Rapporteur urges the international community to commit more wholeheartedly to the implementation of the right to education in emergencies and recommends as a first step that this right should be recognized by States, donors, multilateral agencies and organizations as an integral part of the humanitarian response to conflicts and natural disasters.

145. He also recommends the following measures to guarantee the immediate priority of this right:

(a) Greater emphasis should be placed on guaranteeing the right to education during emergency situations, whereas currently attention is focused on post-conflict situations;

(b) More action should be taken to put an end to impunity for persons and armed groups, including regular armies, who attack schools, students and teachers;

(c) There is need for further research into the effectiveness of some of the measures prompted by the increase in violence against schools, teachers and students, such as armed responses in defense of communities and the promotion of resistance;

(d) The Special Rapporteur acknowledges with satisfaction the increased interest in the allocation and effectiveness of assistance in emergency situations. However, he believes that greater attention should be paid to assigning more resources, specifically to fragile States;

(e) There should be prompt attention to the consequences of emergency situations for girls and female adolescents, and strategic measures developed to give physical and emotional protection in order to ensure that they go to school;

(f) There should be more thorough research into specific programs for young people and adolescents, including the needs of persons with disabilities;

(g) Greater attention should be paid to understanding and the development of education for peace;

(h) There should be a shift away from the current emphasis on quantifiable, but often inaccurate, figures on school enrolment and dropout rates, for example, and greater use of qualitative methodologies which will make it possible to determine the degree of psychosocial care during emergencies.

#### Recommendations to States

146. The Special Rapporteur recommends that States should:

(a) Develop a plan that prepares for education in emergencies, as part of their general educational programs, to include specific measures for continuity of education at all levels and during all the phases of the emergency. Such a plan should include training for the teachers in various aspects of emergency situations;

(b) Draw up a program of studies that is adaptable, non-discriminatory, gender-sensitive and of high quality, and that meets children's and young people's needs during emergency situations;

(c) Ensure the involvement of children, parents and civil society in planning school activities, so that safe spaces are provided for students throughout the emergency;

(d) Design and implement specific plans to avoid exploitation of girls and young women in the wake of emergencies.

#### Recommendations to donors

147. The Special Rapporteur recommends that donors should:

- (a) Include education in all their humanitarian assistance plans and increase the education allocation to at least 4.2 per cent of total humanitarian assistance, in line with need;
- (b) Support the Inter-Agency Standing Committee's Education Cluster;
- (c) Use the Inter-Agency Network for Education in Emergencies (INEE) Minimum Standards as a basis for the educational activities that are part of humanitarian response.

#### Recommendations to intergovernmental and non-governmental organizations

148. The Special Rapporteur recommends that intergovernmental organizations and NGOs should:

- (a) Guarantee that educational responses to emergencies are in line with the INEE Minimum Standards;
- (b) Seek mechanisms to ensure greater and more effective NGO involvement in the Inter-Agency Standing Committee, with a view to improving the coordination of the humanitarian response in the area of education;
- (c) Organize and coordinate efforts for the effective implementation of quality programs of inclusive education during the emergency response.

### **Conclusions and recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions**

**A/HRC/8/3**

#### Conclusions and recommendations (paras.89-92)

89. This section is not designed to summarize the foregoing analysis. In addition to the measures recommended above, the Special Rapporteur makes three other recommendations.

90. The Council should appoint a Special Rapporteur on the rights of detainees.

91. In recent months, the situation in Darfur has deteriorated yet again. During 2007, the Special Rapporteur was a member of the Group of Experts on Darfur, appointed by the Human Rights Council. The Council's action in not renewing the mandate of the Group in December 2007, despite its conclusion that the Sudan had failed to meet many of the benchmarks that had been set, represented the triumph of politics over human rights and brought no credit to the Council. That step should be reconsidered.

92. The Council should acknowledge the vacuum that is created as a result of the ability of States in which serious concerns over extrajudicial executions have been identified to refuse to respond to requests to visit by the Special Rapporteur. The Council should look very closely at the failure in this regard of the countries named in paragraph 11 above.

## **Conclusion and recommendations of the Special Rapporteur on the question of human rights and extreme poverty**

**A/HRC/7/15**

There is no specific section related to recommendations. For more details, please refer to the report.

## **Conclusion and recommendations of the Special Rapporteur on the right to food**

**A/HRC/7/5**

### **Conclusions and recommendations**

76. Some Governments and intergovernmental organizations support the neoliberal theory, which does not recognize the existence of economic, social and cultural rights and claims that only political and civil rights are human rights. According to this theory, only a totally liberalized and privatized, unified world market can gradually eliminate hunger and malnutrition in the world. The evidence shows the contrary - liberalization and privatization have progressed rapidly in most countries during the last 10 years. At the same time, the figures show that worldwide, more people than ever before suffer today from grave, permanent undernourishment. Consequently, the Special Rapporteur maintains that only the normative approach can gradually eliminate hunger and grave permanent malnutrition in the world. The human right to food has to be implemented by all States, by all intergovernmental organizations and by all non-State actors, including multinational corporations. As Jean Jacques Rousseau wrote 246 years ago in the Social Contract: “Between the rich and the poor, it is freedom which oppresses and it is law which liberates.”

77. The Special Rapporteur makes the following recommendations:

(a) Hunger is not inevitable. The lack of progress in meeting the objectives of the World Food Summit and Millennium Goal No. 1 to halve the number of hunger victims by 2015 is unacceptable. All States should take immediate action to realize the human right to food of all their people. Lessons can be learned from the very positive examples of many Governments which have been detailed in this and in previous reports of the Special Rapporteur. The key initiatives of the Governments of Brazil, Cuba and Bolivia observed by the Special Rapporteur during his country missions set an example for the rest of the world;

(b) All States should ensure that their international political and economic policies, including international trade agreements, do not have negative impacts on the right to food in other countries. In this context, European Union Governments must ensure that EPA agreements with Asian, Caribbean and Pacific countries do not negatively affect the progressive realization of the right to food in those countries and include safeguard mechanisms to allow appropriate responses to any resulting food insecurity and hunger.

All international trade agreements should include the participation of all stakeholders, including civil society. The implementation of the concept of food sovereignty should be discussed;

(c) States should improve the international supervisory mechanisms for transnational corporations, especially those which control our food and water system, to ensure that they respect the right to food. This should include discussing and adopting the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights;

(d) States should give priority to investments in long-term development projects that reduce vulnerability to drought and desertification, including through investing in small-scale water harvesting and management to improve food security; (e) States should establish a five-year moratorium on all initiatives to develop biofuels that aim to convert food into fuel. States should ensure that biofuels are produced from non-food plants, agricultural wastes and crop residues, rather than food crops, in order to avert massive rises in prices of food, water and land and the diversion of these resources away from food production. This will require immediate massive investment in “second-generation” technologies for the production of biofuels;

(f) States should strengthen international and national protection mechanisms for people forced to leave their homes and lands because of hunger or other severe violations of their right to food. They should elaborate a new international legal instrument that will provide protection for all people fleeing from hunger who are not currently protected under international human rights, humanitarian or refugee law. The Special Rapporteur suggests that the Human Rights Council mandate its new Advisory Committee to draw up a new norm of temporary non-refoulement of refugees from hunger.

## A/HRC/9/23

### Conclusions

53. The increase in the price of food commodities on international markets has had a severe negative impact on the right to food of the poorest households, who are net food buyers, with particularly damaging consequences in countries where there are either no social safety nets in place or the ones that exist are too weak to withstand the shock. The increase will not benefit many small-holders, either as they face steep rises in costs and lack the infrastructure and support they need to increase food supply. Therefore, while the tension between supply and demand must be addressed in order to reconstitute the food stocks by both increasing the level of agricultural production and limiting waste and overconsumption, what matters in human rights terms is who will produce food, and for the benefit of whom. The current situation creates opportunities. But opportunities should not be mistaken for solutions. While more must be invested in agriculture and rural infrastructure in order to make up for years of neglect, how the investments are targeted, which forms they take, and what their effects are, must be carefully monitored. If a new global partnership for agriculture and food is to emerge from the current crisis, it is crucial to ensure that this partnership does not simply seek to boost supply by promoting technology-driven recipes, but also empowers those who are hungry and malnourished and whose livelihoods may be threatened by precisely this renewed interest in encouraging agricultural production. A human rights framework would contribute to keeping the search for solutions on this track, because it would ensure that the most vulnerable will be given priority, and because it would improve accountability and participation in decision-making. It is therefore regrettable that such a framework has been almost entirely absent from current discussions.

54. The Special Rapporteur calls on the Human Rights Council:

(a) To continue monitoring the initiatives adopted by Governments, the private sector and international agencies, in reaction to the global food crisis, and contribute to the discussion of any future global partnership for agriculture and food, ensuring that it includes attention to its human rights dimensions and that it is based on an effective participation of rights-holders;

(b) To encourage States to build national strategies for the realization of the right to adequate food, which should include mapping of the food-insecure, adoption of relevant legislation and policies with a right-to-food framework, establishment of mechanisms to ensure accountability so that rights-holders are able to claim their right to food, and the establishment of mechanisms and processes which ensure real participation of rights-holders, particularly the most vulnerable, in designing and monitoring such legislation and policies. These strategies should in particular take into account the need to strengthen the protection of the human rights of the most vulnerable groups including land-users whose land tenure is insecure, landless labourers, women, the displaced, indigenous people, minorities, the disabled and the rural and urban poor;

(c) To encourage the development of an international consensus on agrofuels, based not only on the need to avoid the negative impact of the development of agrofuels on the international price of staple food commodities, but also on the need to ensure that the production of agrofuels respects the full range of human rights and does not result in distorted development in producer countries;

(d) To insist that all States ensure that third parties, including private actors, do not interfere with the right to adequate food, and clarify how the private sector can contribute to the shaping of a more just food production and distribution system;

(e) To request further studies on the role of international cooperation in combating the negative effects of non-commercial speculation on the price of primary agricultural commodities, particularly on the potential roles of a virtual global reserve and international commodity agreements;

(f) To examine the contribution the establishment of a global reinsurance fund could make to the realization of the right to adequate food.

## **Conclusions and recommendations of the Independent Expert on the effects of economic reform policies and foreign debt**

**A/HRC/7/9**

42. The independent expert is submitting to the Human Rights Council at its session the draft he has been working on for the general guidelines to be observed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief. They are aimed at ensuring that States' compliance with the commitments derived from foreign debt will not undermine their obligations to ensure the realization of fundamental economic, social and cultural rights for their citizenry, as provided for in international human rights instruments. The draft general guidelines reflect the independent expert's core recommendations concerning economic reform policy and foreign debt.

43. The independent expert encourages States to define country-specific minimum standards or core content in the areas of economic, social and cultural rights. Such standards must be coherent with the provisions of international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights and take into account the relevant general comments of the Committee on Economic, Social and Cultural Rights. The existence of such standards would be an important step towards the implementation of the general guidelines.

44. Shareholders and member States of organizations such as the World Bank and IMF are bound by international human rights law. They should therefore review their own internal procedures and institutional set-ups, including their articles of agreement if necessary, in order to harmonize them with international human rights law. Integration of human rights obligations within the overall objectives of all multilateral organizations would reduce the risk of conflicting and contradictory policy advice to developing countries.

45. With regard to the review of the mandate on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, it is the considered opinion and recommendation of the independent expert that it is necessary to both redefine and rename the mandate with a view to achieving a more specific focus on economic management. The renewed and reformulated mandate would henceforth examine the impact of public finance management on the achievement of fundamental human rights. In essence, the thematic areas of foreign debt and international financial assistance should be repositioned as a part of more comprehensive public financial management. The central issue to be tackled would, therefore, be how to secure a sufficient fiscal space to respect human rights standards while receiving financial assistance with non-disabling repayment obligations.

46. The new mandate-holder charged with assisting the Council in examining the question of human rights and public finance could be invited to further review, revise and develop the draft general guidelines. Future work on the general guidelines could also include the development of analytical tools and operational guidance facilitating their implementation. Such tools would include human rights impact assessment, formulation of minimum standards and identification of core content, human rights-based budgeting and measures to strengthen the accountability of international financial institutions with regard to their

international human rights obligations. Quantification of human rights obligations will remain a key problem in the link between public finance, including debt service, and human rights. Costing exercises would be an essential part of such analyses and advice on additional required fiscal space, debt relief, development aid or domestic revenues might be required.

47. Many of the issues regarding this mandate are also relevant to the right to development. Working relationships between the mandate-holder and the Working Group on the Right to Development and its high-level task force should be strengthened. The independent expert should take into account their work in order to ensure complementarity of their action. Moreover, the mandate should gain more support from the various stakeholders, notably States, international financial institutions, other United Nations bodies and non-governmental organizations.

### **Conclusions and recommendations of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression**

#### **A/HRC/7/14**

67. The right to freedom of opinion and expression, and the related rights of freedom of association and assembly, are fundamental human rights with far-reaching consequences for the enjoyment of all other rights. When freedom of opinion and expression is respected, Governments are held accountable, public policies are designed more effectively and people's voices are heard. Limiting the free circulation of ideals not diminishes plurality and diversity, but undermines democracy entirely.

68. The Special Rapporteur urges Governments to conduct an in-depth assessment of existing national legislation as well as of judicial practices related to all forms of freedom of opinion and expression and to commence, whenever necessary, reform processes in order to guarantee conformity with international human rights norms and standards. The Special Rapporteur also recommends Governments to focus on the protection and the promotion of media independence as a priority, in order to ensure a constant advancement in the field of freedom of opinion and expression.

#### On censorship

69. The Special Rapporteur recommends that Governments adopt legislation that unambiguously prohibits all forms of censorship in media outlets, both in the traditional media and the Internet. Defamation, libel and insult charges, particularly when stemming from public figures and specifically State authorities, do not justify any form of prior censorship.

70. Administrative and bureaucratic regulations of media outlets, including licensing, should be clearly established by law and overseen by independent institutions. The Special Rapporteur urges Governments not to make subjective use of these regulations as a means to exert undue pressure, suspend or ban media outlets.

71. The Special Rapporteur urges Governments to extend the measures to protect freedom of opinion and expression to the Internet, in particular to website contributors and bloggers, who should be granted with the same level of protection as any other type of media. Internet providers and website registration with national authorities should not be subject to any specific requirement. The right to privacy of Internet users should be protected in all circumstances, except cases of child pornography and incitement to racial, religious and ethnic hatred. Any legal dispute arising from the use of the Web should be dealt with in the country where the website has its origin.

#### On diversity

72. The Special Rapporteur urges Governments to take the appropriate measures to create a free and enabling environment where a plurality of media outlets can exist. In this regard, adequate measures need to be taken to prevent the phenomenon of media concentration, in particular the creation of media monopolies that could endanger pluralism, affect media independence and increase the cost of information. These measures should be taken by independent institutions that are protected against political or other forms of interference, particularly from the Government. The legitimate aim of preventing media concentration should not be used as a justification to exert undue pressure on outlets that are critical or independent.

73. Licensing should only be used when strictly necessary, as a technical tool to administer the scarcity of the airwaves. Licensing for abundant media, such as the Internet and the print media, is not a legitimate policy tool and violates the right to freedom of opinion and expression. Licensing should only be administered by an independent body that is insulated from government pressure and should not be used subjectively to ban or suspend independent media outlets, particularly television and radio channels.

#### On Internet governance

74. The Special Rapporteur invites Governments to consider the possibility of establishing an international organization with a specific mandate to improve governance of the Internet. The mandate of the organization would be to develop norms and principles of conduct to guarantee that the Internet will continue to be a democratic medium of expression in full compliance with human rights principles. The Special Rapporteur vigorously emphasizes that any new intergovernmental body administering, partially or totally, Internet governance must ensure freedom of opinion and expression and promote it in the light of article 19 of the Universal Declaration of Human Rights.

#### On the safety and protection of media professionals

75. The Special Rapporteur recommends that Governments take the necessary measures to increase the safety and protection of journalists and other media workers, regardless of their professional and political affiliation. Protection must be ensured at all times, and particularly during armed conflicts, states of emergency and public disorder and electoral processes. Governments should also ensure the protection of other categories at risk, such as trade unionists, social workers, students and teachers, writers and artists. Eliminating impunity for the perpetrators of crimes against media professionals will function as an important deterrent against the repetition of these crimes.

76. Governments and State institutions should, as appropriate, envisage the creation of ad hoc protection schemes, which would allow journalists to continue their activities with an acceptable level of security, while maintaining their independence. Media enterprises should also consider covering the expenses of flexible protection for endangered journalists. Media professionals should not, under any circumstances, be obliged to bear the economic burden of their physical protection, in addition to the mental stress of being at risk.

77. The Special Rapporteur reiterates his call to the Human Rights Council to pay increased attention to the issue of the safety and protection of journalists, in particular in situations of armed conflicts. The Council may wish to consider the opportunity, as previously suggested, 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.

#### On defamation offences



78. The Special Rapporteur strongly recommends that Governments decriminalize defamation and similar offences, confining them to the domain of civil law. The amount of fines to be paid as compensation should be reasonable and allow the continuation of professional activities. The Special Rapporteur also urges Governments to release immediately and unconditionally all journalists detained because of their media-related activities. Prison sentences should be excluded for offences concerning the reputation of others, such as defamation and libel.

79. Governments should also refrain from introducing new norms which will pursue the same goals as defamation laws under a different legal terminology such as disinformation and dissemination of false information. Under no circumstances should criticism of the nation, its symbols, the Government, its members and their action be seen as an offence. Elected officials and authorities should accept the fact that because of their prominent and public role, they will attract a disproportionate amount of scrutiny from the press. Governments should also make sure that the right to privacy, especially in relation to family life and minors, is sufficiently protected without curtailing the right to access to information, which contributes to transparency and democratic control of public affairs.

#### On freedom of expression and HIV/AIDS

80. The Special Rapporteur underlines that the level of protection of human rights in a country has a direct impact on the spread of the AIDS epidemic. In this regard, the right to freedom of opinion and expression, in particular the right to receive information concerning HIV/AIDS, is a central aspect of efforts to tackle the problem.

81. The Special Rapporteur urges Governments to rely on preventive education and information strategies as one of the main defences, alongside care and treatment, against the spread of the HIV/AIDS epidemic. The extensive use of the mass media is necessary to ensure the widest coverage of information campaigns. More generally, information and education should be provided through all available and accessible means. The Special Rapporteur encourages States to cooperate with the media, NGOs and community-based organizations in this endeavour.

82. The Special Rapporteur strongly believes that general respect for and protection of freedom of opinion and expression have a direct impact on the effectiveness of education and information policies, programmes and campaigns for the purpose of HIV/AIDS prevention. He therefore urges Governments to set a framework for the better protection of freedom of opinion and expression and for free flow of information and communications vis-à-vis the general public, as well as specific groups and communities.

#### On the 'digital divide'

83. The Special Rapporteur urges Governments to take measures to increase the affordability and availability of new communication and information technologies, particularly the Internet, to poor and vulnerable communities (to bridge the "digital divide"). Furthermore, apart from technical efforts to increase access, computer literacy programmes should be devised and widely disseminated in order to prepare the less favoured segments of the population to take the full benefits of the new technologies.

#### On freedom of expression and freedom of religion

84. The Special Rapporteur urges media professionals, as well as the public at large, to be conscious of the potential impact that the ideas they express may have in raising cultural and religious sensitivities. The dissemination of intolerant and discriminatory opinions ultimately promotes discord and conflict and is not conducive to the promotion of human rights. Media corporations and journalists' associations, in cooperation

with national and international organizations, should organize regular human rights training programmes in order to enhance professional ethics and sensitivity to cultural diversity of media professionals.

85. The Special Rapporteur further emphasizes that, although limitations to the right to freedom of opinion and expression are foreseen in international instruments to prevent war propaganda and incitement of national, racial or religious hatred, these limitations were designed in order to protect individuals against direct violations of their rights. These limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements. Finally, they are not designed to protect belief systems from external or internal criticism.

### **Conclusions and recommendations of the Special Rapporteur on freedom of religion or belief**

#### **A/HRC/7/10**

No conclusions and recommendations. For more information, please refer to the report.

### **Conclusions of the Special Rapporteur on the right to health**

#### **A/HRC/7/11**

124. Health systems and human rights is a very large and complex topic. In a report of this length, it is impossible to address all of the important issues, such as the role of the State in relation to the private health sector. Elsewhere, the Special Rapporteur has looked at (and continues to examine) one dimension of this issue: pharmaceutical companies and access to medicines.

125. The report has identified urgently needed research, including detailed studies that consistently and systematically apply the general approach outlined in section C of the present report to all six of the WHO health system “building blocks”.

126. In resolution 60/251, the General Assembly has mandated the Human Rights Council to “promote the effective coordination and the mainstreaming of human rights within the United Nations system”. All those responsible for strengthening health systems should recognize the importance of human rights. Moreover, they should embark on the integration of the right to the highest attainable standard into their work. This applies equally to those focusing on a component of health systems, such as the health workforce.

127. Today, there are numerous health movements, perspectives and approaches, including health equity, primary health care, health promotion, social determinants, health security, continuum of care, gender, development, biomedical, macroeconomic and so on. All are very important. The right to the highest attainable standard of health recurs throughout them all. It is the only perspective that is both underpinned by universally recognized moral values and reinforced by legal obligations. Properly understood, the right to the highest attainable standard of health has a profound contribution to make towards building healthy societies and equitable health systems.

## **Conclusions and recommendations of the Special Representative of the Secretary-General on the situation of human rights defenders**

**A/HRC/7/28**

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

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

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

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

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

### Communications

Governments should respond to all the communications sent by the Special Representative. Replies should be timely and comprehensive in responding to the questions asked by the Special Representative. In addition to these minimum requirements, a good practice for replies is to provide information not only on the measures taken to redress the individual situation reported but also on the initiatives undertaken to prevent similar situations from happening again. In some cases, by reporting individual situations, communications point in fact to structural and systematic problems of which individual situations are a consequence. Governments should see the communications procedure as an opportunity to be alerted to situations that, if addressed properly and thoroughly, can improve not only the situation of individual defenders but the overall environment of human rights defenders, which is a fundamental indicator of the general situation of human rights in a country.

Human rights defenders, and organizations and institutions that act as sources of communications, should provide follow-up information on cases submitted to the Special Representative in a more systematic manner. They should also look at replies sent by Governments and provide feedback on that basis. Sources on the

ground are in a better position to assess the information provided in Governments' replies. In order to improve the exchange of information between sources on the ground and the Special Representative, the role of international networks and organizations that act as interfaces between the mandate and sources on the ground is to be strengthened.

### Country visits

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

### Thematic reports

The Special Representative opened some lines of research, such as the enjoyment of defenders of the rights set forth in the Declaration or the situation of defenders at particular risk or less recognized. The Special Representative recommends this analytical work be continued and expanded to enrich knowledge and understanding of the Declaration and the challenges and achievements related to its implementation. The high number of communications sent by the mandate provides now, and every year more so, a solid caseload that can serve as a basis for a wide range of thematic analysis and monitoring. The Special Representative recommends a more active engagement of stakeholders in the preparation of and the follow-up to her thematic reports, and refers to the practical suggestions and recommendations in this area put forward in paragraphs 72 to 74.

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

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

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

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

## **Conclusions and recommendations of the Special Rapporteur on the independence of judges and lawyers**

### **A/HRC/8/4**

58. As a fundamental human right, access to justice is the individual's gateway to the various institutional channels provided by States to resolve disputes. Thus, in addition to refraining from violating that right, States are also bound by a positive obligation to remove obstacles that block or limit the individual's access to justice. As a means of claiming the enjoyment or restoration of other rights (civil, political, economic, social and cultural), access to justice is not limited to ensuring admission to a court but applies to the entire process,

which must be conducted in conformity with the principles of the rule of law (fair trial, procedural guarantees, etc.), right through to execution of the sentence. Thus the principle of equality and the conditions of accessibility and effectiveness that must characterize any mechanism established to deal with disputes must be observed not only at the start of settlement proceedings, but throughout. The absence of suitable means of access to justice ultimately deprives persons of the “right to a right” by denying them the actual means of exercising their rights in practice.

59. The report shows the enormous impact that access to justice has on people’s living conditions, in particular those in vulnerable situations, and on all human rights. This underscores the continuing relevance of the subject, the vital importance of access to justice for the work of the Human Rights Council and the urgent need to implement the recommendations presented below.

### Recommendations

60. The Special Rapporteur recommends that the United Nations should develop a database of best practice in access to justice, covering all civil, political, economic, social and cultural rights. It should assemble the most positive national experiences and those gathered by the special procedures and the various international institutions and specialized agencies carrying out cooperation activities in the field of justice. This reference material would be of great assistance to States, especially States in transition, and would be a very important resource for those working in the judicial system.

61. The Special Rapporteur strongly encourages the adoption of the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights. This instrument will represent a decisive step towards greater enforceability for this category of rights. The violation of these rights affects society’s most disadvantaged groups in particular, but in the medium and long term affects society as a whole.

62. Those States that have not already done so should adopt legislation that will pave the way for justice systems that are accessible, transparent, expeditious and non-discriminatory.

63. In comparison with the executive and legislative branches and other public services such as education and health, investment in the justice system is routinely much lower. As a result, highly dedicated judges, prosecutors and lawyers are liable to find themselves working in very difficult conditions, both materially and in terms of personal safety. Facilitating access to justice requires giving budget priority to the administration of justice, and in such a way as to ensure full autonomy in the management of the resources allocated.

64. In light of the impact on access to justice of proper training for those working in the justice system, States should invest still more in training, concentrating particularly on international human rights law.

65. States should pay special attention to free legal aid programmes. This is generally the only legal assistance accessible to large portions of the population, and the absence or poor design of such programmes excludes the most disadvantaged groups from the judicial system. The experiences of certain Latin American countries with public defenders’ offices deserve to be publicized with a view to possible replication elsewhere.

66. Regardless of the system adopted, it is also crucial to respect and support the work of NGOs and bar associations, and their initiatives to bring justice to traditionally neglected regions and social groups.

67. The Special Rapporteur recommends that the United Nations should publish the Brasilia Rules on access to justice for persons in vulnerable situations.

68. Because of its decisive impact on access to justice and on all human rights, the Special Rapporteur recommends that all United Nations bodies should step up efforts to eradicate poverty and extreme poverty.

69. The Special Rapporteur urges the Human Rights Council to ask the Iraqi authorities to stop applying the death penalty in trials that do not meet international standards. In addition, in the absence of firm information on the perpetrators and circumstances of the attack that took the life of Sergio Vieira de Mello and 21 others and the absolute impunity still surrounding this tragic event, it would be appropriate to create new channels of investigation to establish the facts. Given the very high value the United Nations places on combating impunity and defending the right to the truth, which has so far been consistently violated, and the legitimate interests of the Organization, whose authority has been undermined, it would be appropriate to set up a commission of eminent experts to begin, at last, to establish the facts.

70. The Special Rapporteur also proposes to look more closely at the impact of states of emergency on human rights, and asks the Council to give the subject the special attention it deserves.

### **Conclusions and recommendations of the Special Rapporteur on human rights and fundamental freedoms of indigenous people**

#### **A/HRC/9/9**

85. The United Nations Declaration on the Rights of Indigenous Peoples represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law. The product of a protracted drafting process involving the demands voiced by indigenous peoples themselves, the Declaration reflects and builds upon human rights norms of general applicability, as interpreted and applied by United Nations and regional treaty bodies, as well as on the standards advanced by ILO Convention No. 169 and other relevant instruments and processes.

86. Accordingly, the Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples. The standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights. From this perspective, the standards of the Declaration connect to existing State obligations under other human rights instruments.

87. For the Declaration to be fully operative, States must pursue a range of affirmative, special measures that engage the various institutions of law-making and public administration. This involves a complex process of legal and institutional reform, judicial action, specific policies, and special reparations procedures. It is a process that requires States' full political engagement and financial commitment, and which is not free from obstacles and difficulties of all sorts.

88. The United Nations system, including human rights bodies and mechanisms, specialized agencies and mechanisms with indigenous-specific mandates (the Permanent Forum, the Expert Mechanism and the Special Rapporteur), plays a central role in promoting the implementation of the Declaration at the local level. The principles and rights affirmed in the Declaration constitute or add to the normative frameworks for the activities of United Nations human rights institutions, mechanisms and specialized agencies as they relate to indigenous peoples, including with regard to development cooperation targeted for the benefit of indigenous peoples and other activities that may in some way affect indigenous interests.

89. Because implementing the Declaration depends on the establishment of strong partnerships between States and indigenous peoples, in which both must assume responsibilities, indigenous peoples invariably are crucial actors in the operationalization of the Declaration. Most of the provisions of the Declaration, including the

articles that elaborate on the elements of indigenous self-determination in the areas of self-government and autonomy, cultural integrity and social areas, require the active, good faith engagement of indigenous peoples with States and the broader political and societal structures.

90. Civil society actors, including the educational sector and the media, religious groups, non-governmental organizations and the private sector, further have roles in supporting the broad societal changes required to meet the challenges involved in making the United Nations Declaration a living reality.

### **Conclusions and recommendations of the Representative of the Secretary General on the human rights of internally displaced persons.**

#### **A/HRC/8/6**

81. The Representative acknowledges and welcomes the efforts which have led to greater recognition of the reality of the phenomenon of internal displacement and to progress in the development of the normative framework and the coordination of the response to these questions. However, he wishes to point out that millions of people are still displaced, living in serious distress, and that they have specific needs for assistance and protection by virtue of their displaced status. The Representative points out to governments that, as the Guiding Principles state, they have the primary duty and responsibility to provide protection and assistance to displaced persons at all stages of displacement: as part of efforts to prevent displacement, during displacement itself and as part of the quest for durable solutions.

82. On the occasion of the tenth anniversary of the Guiding Principles, the Representative welcomes the fact that these principles are widely accepted at the global, regional and national levels. In this context, the Representative wishes to make the following recommendations to governments and regional organizations:

- (a) They should develop national legislation and policies which are in keeping with the Guiding Principles and ensure that they are implemented;
- (b) They should bring existing legislation into line with the Guiding Principles;
- (c) They should develop regional legal instruments based on the Guiding Principles and ensure that they are implemented.

83. The Representative is seriously concerned at the difficulties - sometimes systematic in nature - encountered by humanitarian personnel in gaining access to displaced persons. He calls on governments and others concerned to authorize and facilitate speedy, unhindered access to displaced persons on the part of providers of humanitarian assistance, in accordance with the Guiding Principles.

84. The Representative is particularly interested in the fate of displaced persons in the context of peace building. Several of the missions and working visits he has organized have revealed that displaced persons often prefer return to and integration in their places of origin, and the Representative has also observed that the way in which durable solutions to displacement are implemented has a considerable impact on the sustainability of peace. He points out, firstly, that return - or any other solution to the problem of displacement - must be the result of a voluntary individual decision, taken without coercion, on the basis of adequate information. Secondly, he points out that at least three conditions must be met if the return of displaced persons to their homes and their reintegration are to be durable: the assurance of physical safety during and after return; the restitution of property and the reconstruction of homes; and the creation of an economic and social environment conducive to return.

85. In this context, the Representative wishes to make the following recommendations to governments, which should endeavor:

- (a) To guarantee the physical safety of returnees;

- (b) To create an independent mechanism for monitoring during and after return;
- (c) To set up machinery for the restitution of property which takes into account both the written law and traditional rules concerning property;
- (d) To give returnees back their documents without discrimination and without delay;
- (e) To guarantee returnees access, without discrimination, to public services, livelihoods and income-generating activities.

86. The Representative recommends that governments and the international community should embark in parallel on various activities related to early recovery, in such areas as security, reconstruction and development, so as to ensure the durable reintegration of returnees and respect for their rights.

87. The Representative recommends that the international community should give further thought to the machinery for financing early recovery programs, so as to ensure a smooth transition between the emergency phase and the development phase. Such machinery is often ignored when resources are concentrated on humanitarian or development issues.

### **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/7/7**

56. In the course of 2006 and 2007, the Working Group has monitored the activities of private companies offering military assistance, consultancy and security services at the international level. It has conducted field missions to Chile, Ecuador, Fiji, Honduras and Peru which have permitted it to identify how PMSCs recruit, train, use or finance former military personnel and ex-policemen to operate in armed conflict or highly dangerous post-conflict situations. It has also studied emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights. On the basis of this information, it is of the opinion that many of such manifestations are new modalities of mercenary-related activities.

57. The proliferation of PMSCs in the world is a direct consequence of the outsourcing and privatization by member States of many military and security functions. A large number of these companies are the supply side for contracts granted by the Department of Defence or the State Department of the United States of America in connection with low-intensity armed conflicts or post-conflict situations such as in Afghanistan, Colombia and Iraq. To implement their contracts and at the same time make the most lucrative profits, some of these transnational companies, through subsidiaries or hiring companies, create, stimulate and fuel the demand in developing countries. Former military personnel and ex-policemen are recruited as “security guards”, but once in low-intensity armed conflicts or post-conflict situations, they become in fact private soldiers militarily armed. Provisions in national legislations granting immunity to PMSC personnel can easily become de facto impunity, with these private soldiers being only accountable to the company employing them. Some Governments appear to consider these individuals as neither civilians nor combatants, though heavily armed; these individuals are the new modalities of mercenarism. They might also be easily associated with the unclear concept of “irregular combatants”. They often encounter contractual irregularities, poor working conditions, failures in obtaining basic needs and problems to obtain financial compensation for injuries received.

58. The Working Group is concerned at the low state of ratifications and accessions of the International Convention (30 States parties), a major tool available at the international level which promotes the control of States in the outsourcing of functions regarding the use of force.



59. The Working Group is also concerned at the lack of regulations at the regional and national levels regarding private military and security companies which often operate without effective oversight and accountability. Weak or insufficient domestic legislation, regulation and control of PMSCs encourage these transnational companies to seek to recruit former military personnel and ex-policemen from other countries as “security guards” in low-intensity armed conflicts. Because of the difficulty of war-torn States to regulate and control PMSCs, a significant part of the responsibility falls on States from where these transnational companies export military and security services to regulate and control these companies. The Working Group is also concerned that in spite of drawing the attention of the Governments, including in some of the countries in which it has conducted field missions, the recruiting of former militaries and ex-policemen by PMSCs for employment as “security guards” in zones of armed conflict such as Iraq seems to continue.

60. To this end, the Working Group makes the following recommendations:

- Calls upon all States that have not yet done so to consider taking necessary action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and incorporate relevant legal norms into their national legislation. Within this context, the Working Group considers that a model law could be elaborated with a view to facilitating accession of those States which wish to become party to the Convention, by indicating steps to be taken in order to adapt international norms into domestic legislation;
- Recommends regional and other intergovernmental organizations, in particular the European Union and the Organization of American States, to elaborate a common system to regulate private military and security companies exporting their services abroad;
- Encourages States to incorporate relevant international legislation on these issues, as well as relevant regional legislation where such regional frameworks exist (e.g. African Union, Economic Community of West African States, Commonwealth of Independent States), into national law;
- Recommends that, in order to ensure that the military assistance, consultancy and security services offered by private companies at the international level neither impede the enjoyment of nor violate human rights, Governments of States from which these private companies export such services should adopt legislation and set up regulatory mechanisms to control and monitor their activities, including a system of registering and licensing which would authorize these companies to operate and allow them to be sanctioned when the norms are not respected;
- Recommends that States outsourcing activities relating to military assistance, consultancy and security services to private military and security companies should demand the authorization of States from which former military personnel and policemen are recruited by such companies to work in armed conflict or post-conflict situations before the recruitment takes place;
- Urges Governments of States from which private military and security companies export military assistance, consultancy and security services to avoid granting immunity to these companies and their personnel;
- Encourages Governments which import the military assistance, consultancy and security services provided by private companies to establish regulatory mechanisms for the registering and licensing of these companies in order to ensure that imported services provided by these private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country;
- Encourages Governments, when establishing such regulatory systems of registration and licensing of PMSCs and individuals working for them, to include defining minimum requirements for obligatory transparency and accountability of firms, background screening and vetting of PMSC personnel, ensure adequate training of PMSC personnel on international human rights and international humanitarian law, as well as rules of engagement consistent with applicable law and international standards, and to establish effective complaint and monitoring systems including parliamentary oversight. Such regulatory systems should include thresholds of permissible activities, and States should impose a specific ban on PMSCs intervening in internal or international armed conflicts or actions aimed at destabilizing constitutional regimes;

- Encourages States from which former military personnel and ex-policemen are being recruited by private security companies to be deployed to low-intensity zones of armed conflict or post-conflict situations to take the necessary measures to avoid such mercenary recruitment and to issue public statements and apply policies aimed at discouraging such practices;
- Recommends that United Nations departments, offices, organizations, programmes and funds establish an effective selection and vetting system and guidelines containing relevant criteria aimed at regulating and monitoring the activities of private security/military companies working under their respective authorities. They should also ensure that the guidelines comply with human rights standards and international humanitarian law;
- Recommends that regional governmental consultations followed by a high-level round table be convened under the auspices of the United Nations, to discuss the fundamental question of the role of the State as holder of the monopoly of the use of force. Such meetings will facilitate a critical understanding of responsibilities of the different actors, including PMSCs, in the current context and their respective obligations in reaching a common understanding as to which additional regulations and controls are needed at the international level;
- The Working Group recommends that in order to fulfil the complex mandate and challenges given to it under resolution 2005/2 of the Commission on Human Rights and assumed by the Human Rights Council, as well as by General Assembly resolution 61/151, it be allowed to hold three sessions per year, two in Geneva and one in New York;
- Requests the Human Rights Council to support the activities proposed by the Working Group by including them in a relevant resolution.

## **Conclusions and recommendations of the Special Rapporteur on human rights of migrants**

### **A/HRC/7/12**

60. The Special Rapporteur encourages States to view irregular migration as an administrative offence, reversing the trend toward greater criminalization, and to incorporate the applicable human rights framework into their bilateral and regional arrangements for managing migration flows and protecting national security interests, as well as to harmonize their national laws and policies with international human rights norms. At the core of immigration policies should be the protection of migrants, regardless of their status or mode of entry. As such, the Special Rapporteur offers the following recommendations for the formation or reform of regional and bilateral cooperation mechanisms and agreements, as well as the enhancement of national training and analysis programmes and policy measures.

#### Incorporating a human rights framework

61. States should incorporate the applicable human rights framework into their bilateral and regional arrangements for managing migration flows and protecting national security interests. Specific attention should be paid to detainees, smuggled migrants, victims of trafficking, children, women, asylum-seekers and other vulnerable groups. Policies designed for the readmission and reintegration of returnees should ensure that migrants seeking international protection are not forcibly returned without guaranteeing their rights to seek asylum.

62. States should incorporate international human rights norms into their national immigration laws and policies. In this context, States who have not yet done so should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the first comprehensive international treaty focusing on the protection of migrant workers' rights and on the link between migration and human rights; it provides very useful guidance for States on how to ensure that migration takes place in

humane and equitable conditions. In particular, States should review their expulsion procedures and harmonize them with the Convention, which offers the most comprehensive protection for non-nationals in this regard.

63. States should review their national policies to harmonize them with existing regional and subregional agreements on labour mobility. This should be done with a view to evaluating which national policies are restrictive in this sense, and what practical implications restrictive national frameworks have for the human rights of migrants, both documented and not, as well as for the obstacles it places on promoting the free movement of labour which might have positive consequences for the national economy.

64. All cases of persons involved in the interception of migrants at sea, whether irregular migrants or those involved in the rescue or transport of migrants found to be irregular, should be treated on an individual basis and granted the basic right to due process. Persons believed to be smuggled or trafficked should be brought before an independent judge without the involvement of the country of origin; States should renew their cooperation in protecting witnesses and victims who assist in identification and prosecution of smugglers and traffickers. Persons claiming international protection should be allowed to enter the national asylum procedure without delay.

65. States should take measures to review their national laws applicable to the detention of migrants to ensure that they are harmonized with international human rights norms that prohibit inhumane treatment and ensure due process. States should take measures to ensure that detention of irregular migrants is not arbitrary and that there is a national legal framework to govern detention procedures and conditions. States should develop and implement systems of alternatives to detention in the context of flows of undocumented migration - which could provide strong procedural safeguards including the obligation to have a judge decide on the legality of detention and on the continuing existence of reasons for detention - and generally permit detention only as a last resort.

#### Building national capacities

66. States should further develop and implement training and awareness-raising programmes for border authorities, officials at detention centres, police and military officers, and government officials on the human rights afforded to irregular migrants during all phases of the migration stage including, inter alia, interception and rescue at sea, detention and expulsion, and smuggling and trafficking, where applicable.

67. States should consider establishing an independent body at the regional level that can help monitor the effectiveness of certain policies contributing to the externalization of border controls. This might be in the form of enhancing the capacity of an already existing academic or policy institute or by forming stronger ties with the data and monitoring sections of existing regional systems of human rights protection (e.g. the Inter-American System for Human Rights, the Council of Europe, or the African Commission on Human and Peoples' Rights), where applicable.

68. States should take measures to further promote legal migratory channels to encourage regular labour mobility flows, including schemes for temporary and circular migration and the movement of skilled and semi-skilled labour under regional mechanisms for the free movement of labour. Where provisions for the free movement of persons already exist at the regional level, States should take measures to ensure the proper institutional structures are in place to implement such provisions, with particular regard to the human rights protections afforded to migrants.

69. States should take all measures to inform officials involved in potential interdiction at sea operations of the rights and protections afforded to migrants in transit, including those that are irregular. The rescue of persons in distress at sea is not only an obligation under maritime law but also a humanitarian necessity, regardless of the legal status of those found or their reasons for travelling by sea. Trafficked persons and other vulnerable

groups such as separated children and asylum-seekers should receive specific assistance, including necessary health care at reception.

70. States should take measures to inform potential migrants about the risks associated with smuggling and trafficking operations, as well as the rights afforded to migrants even if in an irregular situation, particularly if detention is used. Particular attention should be paid to the gender-specific stigmatization associated with irregular migration and to the exploitation of children in all forms.

71. States should take measures to further understand and inform border officials, detention centre officials, and police and military officers about the distinctions between smuggled migrants, victims of trafficking, and other irregular migrants who potentially fall into both categories. All efforts should be made to fully and without prejudice investigate cases on an individual basis, provide due process guarantees and consular assistance, and to provide assistance to irregular migrants in their safe return, where applicable.

### Data and analysis

72. States should bolster their ability to analyse data about migration policy. In support of individual States' domestic policies, laws and practices that have cross-border effects, an observatory could be established to compile accurate statistical and related data and to provide independent, impartial and expert analyses of key aspects of migration policy in order to discern their successes and deficiencies.

73. States should take further measures to enhance annual quantitative data on labour demand by host countries, which is the driving force behind economic migration, in an effort to better regulate the supply of labour migrants with the needs of host countries. Host countries and countries of origin each need to identify, respectively, current and projected labour supply shortages and surpluses by economic sector, occupation, region and province; furthermore, differentiation between labour shortages that are structural and those that are seasonal or otherwise temporary is important for designing and implementing effective labour migration policies.

74. States should devise plans for policymakers to explore the relationship between labour supply and demand and xenophobia at the institutional and community levels. Further consideration needs to be given to better integrating statistics into flexible, inclusive, and sustainable decision-making processes to govern admission, employment and residence status of migrants, as well as communication/education campaigns on the benefits of migration to the local and national economy. Recognition of demand-driven labour migration should mitigate the potential for anti-immigrant sentiments and rhetoric.

75. States should take measures to review, compile and share information on irregular maritime migration. For bilateral and multilateral agreements to restrict irregular maritime migration States, relevant intergovernmental organizations and non-governmental actors should establish mass information campaigns to inform those in transit of the risks associated with such travel and improve communication among officials when migrants are intercepted at sea, including the risks associated with overland travel en route to the prospective embarkation point. Empirical data on the scale and scope of irregular maritime migration, interception, rescue at sea, disembarkation and treatment of persons who have disembarked should be harmonized and more systematically compiled by Governments and international agencies.

## **Conclusions and recommendations of the Independent Expert on minority issues**

### **A/HRC/7/23**

77. The independent expert welcomes the important work being done to address and combat the causes and consequences of the discriminatory denial or deprivation of citizenship of minorities and developments in this regard, and encourages the international community to use the present report as a tool to take those steps further. While positive practices have been identified, few have fully addressed and resolved the situations faced by members of minority communities in all regions. Efforts must be intensified by all relevant actors, and most importantly States themselves, which have primary responsibility for the protection of the rights and welfare of all individuals residing on their territories irrespective of their citizenship status. The independent expert makes the recommendations as set out below.

78. The right to a nationality is a fundamental human right and must be considered as such by all States.

79. While States have a prerogative to establish laws governing the acquisition, renunciation or loss of nationality, they must do so within the framework of international human rights law. In situations relating to constitutional amendments or changes to national legislation relating to the conferral of citizenship, States should not revoke citizenship retroactively.

80. States must not arbitrarily deny or deprive minorities of citizenship on the basis of colour, descent, national or ethnic origin, language, race or religion. Fundamental fairness, including the right to appeal, must be guaranteed in all immigration and citizenship procedures.

81. With limited exceptions, States must not consider citizenship a condition for the enjoyment of human rights, including the rights of persons belonging to minorities.

82. States are urged to ratify or accede to all relevant international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Reduction of Statelessness, to ensure that nationality legislation is consistent with such standards and to fully conform to international obligations.

83. UNHCR and OHCHR should undertake a study to reveal further the dimensions of the statelessness problems of minorities globally. This should include, to the extent possible, the collection and analysis of statistical data disaggregated on the basis of gender, ethnic, linguistic and religious criteria.

84. States must register all children and issue birth certificates immediately after birth in a non-discriminatory manner. Where birth registration certificates do not confer nationality, States should allow for procedures for citizenship determination by an independent body shortly after birth.

85. States must grant nationality to children born on their territory if the child would otherwise be stateless. In this case, the immigration status of parents should be irrelevant.

86. States are urged to allow dual or multiple nationality.

87. States are encouraged to facilitate the acquisition of citizenship through naturalization procedures or permanent residency to persons lawfully resident in the country for a period commensurate with their having created established social, economic and community ties in the State. It is recommended that the period be no longer than 10 years.

88. State requirements for the granting of citizenship should be reasonable and not be overly burdensome for individuals.

89. States should facilitate full access to identity documentation in a non-discriminatory manner. In any determination that supporting documents are fraudulent, the burden should be upon the State to prove falsity and such determination should be subject to judicial review and appeal. Registration should take into account the particular circumstances of persons belonging to minorities, including lack of birth registration when ancestors arrived in the territory of the State. Registration costs should be minimal, and registration offices should be physically accessible to all. Registration forms should be in all national languages and in the languages spoken by large minority populations.

90. States should conduct information campaigns on the right to citizenship and necessary procedures to obtain recognition of this right, in a language and a form accessible to all. Minority groups should be directly involved and represented in relevant administrative structures. Mobile campaigns are often a good means of addressing existing documentation problems and reaching rural areas.

### **Conclusions and recommendations of the Special Rapporteur on racism**

#### **A/HRC/7/19**

72. The Special Rapporteur invites the Human Rights Council to draw the attention of member States to the alarming signs of regression in efforts to combat racism, racial discrimination and xenophobia, particularly the upsurge in racist violence, and to remind them of the crucial importance of political will in the refusal to trivialize racism, xenophobia and intolerance, the rejection of their use in politics and electoral campaigns, and the systematic combating of racist and xenophobic political platforms.

73. In this regard, he invites the Council to encourage member States to adopt, as a matter of urgency, national legislation to combat racism, racial discrimination and xenophobia, pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination.

74. The Human Rights Council is invited to draw the attention of member States to the serious nature of the defamation of religion, anti-Semitism, Christianophobia and, more particularly, Islamophobia, and to promote the fight against these phenomena by strengthening interreligious and intercultural dialogue concerning the common ethics of all religions, the critical introspection required of all religions on the historical and theological sources of the defamation they are subjected to, and mutual understanding and joint action to meet the fundamental challenges of democracy, development, peace and the promotion of human rights.

75. The Council is invited to encourage member States to wage a systematic campaign against incitement to racial and religious hatred by maintaining a careful balance between the defence of secularism and respect for freedom of religion and by acknowledging and respecting the complementarity of all the freedoms embodied in the International Covenant on Civil and Political Rights.

76. The Special Rapporteur recommends that the Human Rights Council remind member States of the link between efforts to combat racism, racial discrimination and xenophobia and the construction of democratic, interactive and egalitarian multiculturalism.

77. In the same spirit, the Council is invited to draw the attention of member States to the historical and cultural depth of racism. Efforts to combat racism must involve economic, social and political measures and relate to the question of culture and identity, namely the dialectic between respect for the cultural and religious identities of minority groups and communities, and the promotion of cross-fertilization and interaction between all national communities. The Special Rapporteur recommends that the Council draw the attention of member States to the importance of developing an intellectual front against racism and, consequently,

combating – through education, scientific research and information - ideas, concepts and images likely to incite or legitimize racism, racial discrimination or xenophobia.

78. The Human Rights Council is invited to encourage member States to adopt an approach to questions relating to immigration, asylum and the situation of foreigners and national minorities that is based on international law and instruments such as the Covenants and the Durban Programme of Action, which attach priority to respect for their rights.

79. The Human Rights Council is invited to stress the seriousness of racist and xenophobic manifestations and practices at points of entry to countries, reception areas and waiting areas. It is essential that such areas should not become “no-rights zones” for non-citizens in general and for immigrants and asylum-seekers in particular.

80. In order to combat the resurgence of racism and xenophobia and the association of racial, cultural and religious factors, the Special Rapporteur reiterates his recommendation on the need to assess manifestations of racism and xenophobia accurately and to establish, to this end, within OHCHR, a permanent centre for monitoring racist phenomena, which would submit an annual report to the Human Rights Council and the General Assembly at the same time as the general report and progress report of the Special Rapporteur.

81. The Special Rapporteur suggests that his general report and recommendations be included in the documentation submitted to all bodies involved in the Durban World Conference review process, and his reports on countries visited included in documentation submitted to the regional meetings held as part of this process.

82. The Special Rapporteur recommends that the Human Rights Council draw the attention of member States to the seriousness and depth of the resurgence of manifestations of racism and xenophobia, both old and new. The combination of the processes of multiculturalization and globalization means that no society is immune from these phenomena, which today constitute one of the most serious threats to democracy and the coexistence of all societies. A vigorous and consensual response from the international community is therefore urgently needed.

83. In this context, the Council is invited to emphasize that the Durban Programme of Action constitutes the most detailed response to these phenomena to date. It is therefore of the utmost importance that the Durban review process should provide the opportunity for the international community to express its political commitment to assess these phenomena, and not only formulate political, legal and cultural measures to supplement the Durban Programme of Action in all the areas in which differences were expressed following the World Conference, but also to propose ways and means of implementing a programme that is revised to take account of the seriousness of the situation. Apart from demonstrating a lack of political will to confront these phenomena, a failure of the World Conference review process would, above all, pave the way for intensification of the worrying trends mentioned in the present report, namely, the upsurge in racist violence, the political use of racism and its intellectual legitimization.

## **A/HRC/9/12**

### **Recommendations**

60. In this chapter, the Special Rapporteur recapitulates for the last time the recommendations made in the previous reports to the Human Rights Council with a view to promoting measures to combat racism, racial discrimination and xenophobia.

61. The Special Rapporteur recommends that the Human Rights Council call upon Governments of Member States to continue to work for implementation of the Durban Declaration and Programme of Action,

which should remain the cornerstone of efforts to combat racism, racial discrimination, xenophobia and related intolerance.

62. The Special Rapporteur invites the Human Rights Council to appeal to the Governments of Member States to evince and demonstrate a firm political will and commitment to opposing the rise of racial and religious hatred. In this context, Governments should be particularly vigilant in preventing the political exploitation of discrimination and xenophobia, notably the ideological and electoral insinuation of racist and xenophobic platforms in the programmes of democratic parties, and should strongly reaffirm the principle that respect for human rights, including the eradication of the culture of racism, xenophobia and intolerance, constitutes the main pillar of national security and democracy and should not be placed in the service of ideological or political convenience.

63. The Special Rapporteur invites the Human Rights Council to take greater account than in the past, in combating racism and discrimination, of a twin development: the growing interlinking of the factors of race, ethnicity, culture and religion, which should be deconstructed as a matter of urgency; and the widespread rise of anti-Semitism, Christianophobia, Islamophobia and other forms of religious discrimination.

64. The Special Rapporteur recommends that the Human Rights Council invite Governments, in combating racial and religious hatred, to fully comply with their obligations in relation to freedom of expression and freedom of religion, in keeping with the relevant international instruments and in particular articles 18, 19 and 20 of the International Covenant on Civil and Political Rights, having due regard to their interrelations and complementarity.

65. The Special Rapporteur strongly recommends that the Human Rights Council 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 Prejudice.

66. In the light of the divergent and conflicting interpretations of these articles, the Special Rapporteur wishes to recall the recommendation he made to the Human Rights Council in the report submitted jointly with the Special Rapporteur on freedom of religion or belief (A/HRC/2/3), namely to undertake deeper reflection on the interpretation of these provisions. In particular, both Special Rapporteurs had encouraged the Human Rights Committee to consider the possibility of adopting complementary standards on the interrelations between freedom of expression, freedom of religion and non-discrimination, in particular in the form of a general comment on article 20.

67. The Special Rapporteur recommends that the Human Rights Council invite Member States to promote the dialogue between cultures, civilizations and religions having regard to:

(a) The need to accord equal treatment to combating defamation of religions in all its forms so as to avoid establishing any hierarchy in the different manifestations of discrimination, even if they may vary in nature and degree depending on historical, geographical and cultural context;

(b) The deep historical and cultural roots of all forms of defamation of religions and the corresponding need to combine legal measures with an intellectual, cultural and ethical approach that takes account of the processes, mechanisms and representations at the origin of these manifestations of discrimination over time;

(c) The essential link between the different spiritual, historical and cultural forms of religious discrimination and the universal nature of their underlying causes;

(d) The need to create conditions conducive to encounter, dialogue and interaction in order to further social harmony, peace, respect for human rights and development and to combat all forms of racism, xenophobia and discrimination as they relate to all religions and spiritual traditions;



(e) The need to be vigilant in maintaining a balance between the defence of secularism and respect for religious freedom. Governments should pay particular attention to safeguarding and protecting the places of worship and culture of all religions and to furthering the free expression of their religious and spiritual beliefs.

68. The Special Rapporteur strongly recommends that the practice of intercultural and interreligious dialogue should begin at the national level through the promotion of mutual knowledge and joint action on the major social challenges and the furtherance and observance of human rights. Efforts to promote cultural and religious pluralism within each country are a necessary and meaningful first step towards promoting the dialogue among cultures and religions at the international level.

69. The Special Rapporteur recommends that the Human Rights Council invite Member States to promote critical introspection of an historical and theological nature in order to recognize and discover solutions to the intra-religious conflicts that fuel the reciprocal defamation of religions.

### **Conclusions and recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

#### **A/HRC/9/20**

50. Over the period of her mandate, the Special Rapporteur will propose concrete recommendations to address the prevention of slavery for those who are at risk of being enslaved and the restoration and protection of the human rights and dignity of enslaved persons.

51. The Special Rapporteur on contemporary forms of slavery realizes the complexity of the mandate and acknowledges that there are many cross-cutting issues and overlaps with the mandates of other special procedures and other human rights mechanisms. She will therefore focus on working on forced labour, child labour as it relates to the economic exploitation of children, and domestic work where she will seek, as far as possible, to do joint work, for example, with treaty bodies and other special procedures.

52. The Special Rapporteur will work on contemporary forms of child labour for economic exploitation. She will analyse the structural causes in modern forms of slavery, such as children working in sweatshops. In doing this she will seek to cooperate with the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises and other relevant actors.

53. The Special Rapporteur will also look at traditional forms of slavery such as bonded labour and serfdom. The Special Rapporteur acknowledges that these practices are still very real today despite various efforts made by Governments and NGOs to eradicate them.

54. The Special Rapporteur hopes that she will be able to establish a constructive dialogue and count on the cooperation of all stakeholders (such as NGOs, academia, private sector, Governments) in order to jointly identify measures to promote and protect the human rights of enslaved persons, in particular victims of forced labour, child labour as it relates to the economic exploitation of children, and domestic work.

55. The Special Rapporteur will count on the cooperation of Governments, NGOs, national human rights institutions, intergovernmental organizations, United Nations and other independent experts, regional organizations and concerned individuals to carry out her functions and, in particular, to receive information, cooperation and support during her country visits and in connection with her communications on individual

cases, and for the preparation of reports on thematic issues. 56. The Special Rapporteur will rely on the support of Governments, NGOs, national human rights institutions and intergovernmental organizations, including regional organizations and NGOs, to give concrete follow-up to her future recommendations at the country level.

## **Conclusions and recommendations of the Independent Expert on human rights and international solidarity**

### **A/HRC/9/10**

27. International solidarity by its nature covers a broad range of areas of cooperation and assistance. This does pose a challenge in identifying specific areas of focus in the independent expert's work. In accordance with his broad mandate, in this report, the independent expert considered it important to establish the legal framework of international cooperation in human rights conventions and treaties and how the obligation of international cooperation has evolved in human rights instruments.

28. International solidarity and international cooperation are based on the foundation of shared responsibility. In the broadest sense, solidarity is a communion of responsibilities and interest between individuals, groups and States, connected to the ideal of fraternity and the notions of cooperation. The relationship between international solidarity and international cooperation is an integral one, with international cooperation as a core vehicle by which collective goals and the union of interests are achieved.

29. International cooperation is well established in international law, in human rights instruments, including covenants and conventions and is also a core theme in the Declaration on the Right to Development adopted in 1986. Millennium Development Goal 8 makes explicit mention of a "global partnership for development", covering targets on aid, debt, trade and transfer of technologies. The seven other Millennium Development Goals and their targets can only be achieved through the pursuance of international cooperation implicit in the concept of a "global partnership for development".

30. The typology of respect, protect and fulfil delineate essential aspects of international obligations in relation to all human rights and is a useful framework to interpret provisions on international assistance and cooperation.

31. The obligations related to international assistance and cooperation are complementary to the primary responsibility of States to meet their national human rights obligations. There is a shared responsibility for development met by States' national obligations and the obligations of international cooperation, facilitating global implementation.

32. International cooperation, while conflated with international development assistance is a broader term and can range from transfer of resources to technical assistance and cooperation, to policy advice, international sharing and exchange of experience, expertise and good practice to assist in effective implementation, networking and workshops, development of technologies, as elaborated in article 32 of the Convention on the Rights of Persons with Disabilities.

33. To conclude, international assistance and cooperation must be oriented, as a matter of priority, to the realization of all human rights, in particular economic, social and cultural rights, internationally agreed goals such as the Millennium Development Goals and must respond swiftly and effectively to grave situations such as natural disasters, which will be further explored in the future.

**Conclusions and recommendations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

**A/HRC/8/13**

57. I recall again the importance of placing human rights at the core of international cooperation in counter-terrorism and the obligation of all States to ensure that measures taken to combat crimes of terrorism comply with their obligations under international human rights law, in particular the right to recognition as a person before the law, due process, and non-refoulement. Compliance with international human rights standards is essential, never more so than where counter-terrorism measures involve the deprivation of individual liberty.

58. I am concerned with the practical obstacles to truly effective international and judicial cooperation in counter-terrorism which arise from unlawful interferences with privacy, search, seizure and surveillance; the insufficient remedies for violation of human rights in the context of evidence-gathering and information-sharing; the transfer and/or admissibility of evidence gathered by unlawful means; insufficient respect for the principle of legality in relation to the definition of terrorist offences; the protection of witnesses; and inappropriate redistributions of burdens of proof in particular legal proceedings in this area. My Office will continue to reflect on these issues with a view to assisting States in strengthening the effectiveness of mutual legal assistance, respect for human rights and upholding the rule of law in effectively countering terrorism.

59. I encourage all States that have not ratified the Optional Protocol to the Convention against Torture and the Disappearances Convention to do so. That said, ratification itself will not have full meaning unless it is accompanied by the compliance of national legislation with international human rights standards, the regular submission of periodic reports to the respective monitoring bodies and the implementation, at the national level, of their recommendations. Only through this way, can it be evenly guaranteed that all measures will comply with human rights law.

60. Targeted sanctions such as asset freezing and travel bans may be useful tools in States' efforts to combat terrorism and might be helpful in preventing terrorist activity, but such procedures must be improved fully to meet human rights standards.

61. States should increase awareness and support for victims of terrorism, by pointing to the importance of the work that is required in order to give victims a voice that can help to humanize them and provide an important counterpoint to a narrative of hate and violence.

62. States should cooperate openly and without reservation with the special procedures of the Human Rights Council in this area. In the sphere of the Global Counter-Terrorism Strategy, I encourage all States to issue a standing invitation to all special procedures of the Human Rights Council, in particular to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

63. Finally, States should strengthen the national capacities of their human rights institutions; provide training to their law enforcement authorities - including intelligence, customs and immigration services - on international human rights laws and standards, with proper remedies to ensure accountability. Failure by States to safeguard human rights in this area will lead directly toward increased instability and decreased legitimacy of Governments, to polarization in and between societies and to increasing radicalization.

## **Conclusions and recommendations of the Special Rapporteur on torture and other cruel, degrading or inhumane treatment or punishment**

**A/HRC/7/3**

68. With regard to a gender-sensitive definition of torture, the Special Rapporteur referred to the elements contained in the definition of the Convention against Torture and stressed that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination. He also proposed to introduce an additional element, “powerlessness” to underline that, whereas detention contexts are classic situations of powerlessness, it can also arise outside of detention or direct State control. Situations constituting of de facto deprivation of liberty may occur in different “private” settings. There are also contexts, where fear can create a situation of total control: battered wives, victims of trafficking, as well as women prisoners who have been abused are likely to experience a permanent state of fear based on the unpredictable behaviour of the perpetrator. The Special Rapporteur considers that the concept of “acquiescence”, aside from the protection obligations, entails a duty for the State to prevent acts of torture in the private sphere and recalls that the concept of due diligence should be applied to examine whether States have lived up to their obligations.

69. Echoing international and national jurisprudence, the Special Rapporteur stressed that rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry. He also recalled that forced abortions or sterilizations carried out by State officials in accordance with coercive family planning laws or policies may amount to torture and that any form of corporal punishment is forbidden under international law. Regarding women-specific aspects of detention, he stressed that special attention should be paid to pregnant women and mothers of young babies and the hygienic needs of women. He also pointed to the heightened risk of torture and ill-treatment if women are guarded by men or not strictly separated from male co-detainees.

70. The Special Rapporteur concluded that torture and ill-treatment can occur in different private contexts. He pointed to the striking parallels between “official” and “private” torture in terms of strategies, process and resulting trauma, and showed that State acquiescence can occur at different levels. In order to ensure a gender-inclusive approach to torture, the Special Rapporteur underlined the need to perceive it as a process. Mental trauma does not happen at one point in time, but needs to be put in context. With regard to sexual violence, stigma is a crucial element at all stages, starting from its humiliating intention as well as its impact which, apart from the often devastating physical and mental consequences, often entails exclusion from the family and/or community and can lead to outright destitution.

71. The Special Rapporteur underlined that it is crucial to interpret the torture protection framework in the light of a wide range of human rights guarantees, in particular the set of rules that has developed to combat violence against women, which can provide valuable insights into the particular challenges posed by violence against women. Furthermore, many lessons can be drawn from international criminal law, in particular when it comes to conceptualizing what acts can be encompassed by the term “rape” and gender-sensitive rules of evidence and procedure. Refugee law provides valuable insights not only into the long-term effects of some types of violence, but also in regard to a lack of action to protect by a given State. Furthermore, other disciplines, such as psychology and medicine, should be looked to more systematically when analysing whether a specific violation may constitute torture or not.

72. With regard to justice for women victims of torture, the Special Rapporteur found that in many contexts, the criminal law system, the court rules of procedure and evidence, as well as reparation and rehabilitation programmes and policies are not sufficiently gender-sensitive. He also stressed that the victim’s consent can never be implied in a de facto situation of powerlessness.

73. The Special Rapporteur therefore calls upon States to ensure that women victims of torture and ill-treatment by officials enjoy full protection under the law and that special measures are taken to prevent sexual violence in the contexts of detention and control. He also strongly recommends that torture and ill-treatment be understood in a gender-inclusive way and that States extend their prevention efforts to fully include torture and ill-treatment of women, even if it occurs in the “private” sphere.

74. The Special Rapporteur calls upon States to address stigma, as a central obstacle hindering women victims to search justice, in particular in cases of sexual violence, at all stages of the criminal process. Special measures need to be taken to ensure that women report torture and ill-treatment and that those who receive these complaints secure the necessary evidence in a gender-sensitive manner. Court rules need to be adapted to the special needs of victims of sexual violence and ensure that objective assessments of the de facto powerlessness of a victim are made on a case-by-case basis.

75. As proclaimed by the Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation, reparation and rehabilitation programmes should be inclusive and participatory at all stages. Truth-telling, criminal justice and ensuring non-repetition should be at their core. The categories of crimes that trigger reparation should explicitly mention gender-specific forms of torture and ill-treatment. Special attention needs to be paid to measures aimed at overcoming the stigmatization of victims of sexual violence and to address the socio-economic impact of violence against women. Victims should also have access to medical services and to support programmes that focus on the psychological trauma caused by sexual violence. The same is applicable to individual rehabilitation processes.

76. With regard to gender-sensitive monitoring/fact-finding, the Special Rapporteur stresses that anti-torture monitoring mechanisms at the national and international levels should extend their scrutiny of the legal framework to a broad range of laws that might be of particular concern to women. The network of partners should include women’s rights groups and relevant academic and research institutions. Further, social care centres and psychiatric institutions should be included in the visits. He also recommended that monitoring/fact-finding teams be composed in a gender-inclusive manner (including female doctors) and that all its members be trained to deal with sexual violence and other sensitive gender-specific issues. Fact-finders and monitors need to be able to ask the right questions using gender-sensitive language and to assess the psychological trauma that comes with violence, in particular sexual violence. Also, to the extent possible, fact-finding should pay attention to the private sphere: whereas it would not be feasible to visit private homes to assess whether domestic violence occurs, an effort can be made at accessing sources that would know about domestic violence, trafficking, female genital mutilation and other forms of “private” torture and ill-treatment of women. In such a scenario, fact-finding should include interviews with victims at shelters to assess the prevention and protection gaps, and medical institutions should be consulted.

**Conclusions and recommendations of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights**

**A/HRC/7/21**

66. The Special Rapporteur would like to stress that the right to participation in public life is linked very closely with the right to information (and to education). The right to popular participation in decision-making is enshrined in article 21 of the Universal Declaration of Human Rights and several other international instruments. The exercise of the right to participation would be meaningless if there was no access to relevant information on issues of concern.

67. The Special Rapporteur believes that the Human Rights Council may want to recognize explicitly the right to information as a precondition for good governance and the realization of all other human rights. States should move towards implementing the right to information enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Special Rapporteur notes that information held by the State should be considered to be held in trust for the public, not as belonging to the Government. Although the State can invoke national security or defence clauses, it is the view of the Special Rapporteur that this responsibility should not be abused by States or used to derogate from their duty to protect and promote the rights of their citizens in relation to the adverse effects of toxic and dangerous products and wastes.

68. The Special Rapporteur would like to appeal to both developed and developing States to adhere more strictly to international normative frameworks, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Special Rapporteur notes that there are currently 170 parties to the Convention and appeals to those States that have not already done so to consider ratifying it. The Special Rapporteur also urges States to take into account, and if possible become parties to, other legal instruments such as the Aarhus Convention, which are central to the full realization of the right to information with regard to environmental matters, which in turn would help combat the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

69. While the Special Rapporteur acknowledges that developing countries are sometimes left with little choice owing to developmental needs and situations of poverty, both developing and developed States need to find alternative solutions to the trade of toxic wastes and dangerous products. Although the income generated by such trade is very attractive, States need to take into account the future costs and long-term consequences of environmental degradation, as well as their obligation to save future generations from a multitude of health problems. The Special Rapporteur is particularly concerned about the consequences of these health problems for women and young persons and appeals to States to put in place adequate means for their protection.

70. The Special Rapporteur would like to emphasize that developed countries must not see developing nations as “cheap dumping grounds” to get rid of unwanted and hazardous products and wastes. While the Special Rapporteur welcomes the high environmental and health standards that often prevail in developed States, at both the national and the regional level, it is his hope that developed countries will consider passing on key knowledge on the safe handling of toxic and dangerous products, and their experience in monitoring safety standards and the effective running of regulatory mechanisms, to developing countries.

### **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/8/5**

104. The current debate on the business and human rights agenda originated in the 1990s, as liberalization, technology, and innovations in corporate structure combined to expand prior limits on where and how businesses could operate globally. Many countries, including in the developing world, have been able to take advantage of this new economic landscape to increase prosperity and reduce poverty. But as has happened throughout history, rapid market expansion has also created governance gaps in numerous policy domains: gaps between the scope of economic activities and actors, and the capacity of political institutions to manage their adverse consequences. The area of business and human rights is one such domain.

105. In fact, progress has been made in the past decade, at least in some industries and by growing numbers of firms. The Special Representative’s 2007 report detailed novel multi-stakeholder initiatives, public-private hybrids combining mandatory with voluntary measures, and industry and company self-regulation. All have their strengths and shortcomings, but few would have been conceivable a mere decade ago. Likewise, there is

an expanding web of potential corporate liability for international crimes, reflecting international standards but imposed through national courts. Governments have adopted a variety of measures, albeit gingerly to date, to promote a corporate culture respectful of human rights. Fragments of international institutional provisions exist with similar aims.

106. Without in any manner disparaging these steps, our fundamental problem is that there are too few of them, none has reached a scale commensurate with the challenges at hand, there is little cross-learning, and they do not cohere as parts of a more systemic response with cumulative effects. That is what needs fixing. And that is what the framework of “protect, respect and remedy” is intended to help achieve.

107. The United Nations is not a centralized command-and-control system that can impose its will on the world - indeed it has no “will” apart from that with which Member States endow it. But it can and must lead intellectually and by setting expectations and aspirations. The Human Rights Council can make a singular contribution to closing the governance gaps in business and human rights by supporting this framework, inviting its further elaboration, and fostering its uptake by all relevant social actors.

## **Conclusions and recommendations of the Special Rapporteur on violence against women, its causes and consequences**

### **A/HRC/7/6**

116. These proposals for violence against women and State response indicators are rooted in the human rights obligations of States, understanding of indicators and the necessity of beginning from an evidence base. There is considerable work to be done to move from proposals to implementation, not least developing technical guidance, piloting and capacity-building. Once established, however, there are many entry points for internationally comparable indicators on violence against women in the work of the United Nations. This project should be taken forward by a small expert working group with representatives from relevant United Nations agencies and mechanisms, academics and experts on violence against women from developed and developing countries. This group should create the technical manual and oversee pilots in resource-rich and poor contexts, in countries with longer and shorter histories of engagement with violence against women. The technical guidance should be revised following piloting.

117. A concurrent process should be building support for the management of the data systems at the national level, with the project the lead responsibility of national women’s machinery, in partnership with national statistical agencies/offices and relevant partners. It is anticipated that the calculation of national and international indicators should, where appropriate, be done by national statistical agencies/offices working with independent experts from the non-governmental organizations and academic communities. What is undoubtedly needed are partnerships for mutual benefit, combining the legitimacy and credibility of the national statistical agencies/offices in many (but not all) States with the understanding and creativity of researchers and NGOs who have specialized in the field of violence against women. One possibility would be standing committees, linking statisticians, violence researchers on violence against women, national women’s machineries and service providers with the task of ensuring indicator data are collated and that a rich research culture is encouraged and enabled.

118. In closing, attention needs to be drawn to the “paradox of violence against women”: as States do more - change laws, increase protection, provide resources for NGO support services - it appears that levels of violence increase. This is because the initial baseline for reporting was so low. Increased reporting to institutions and in surveys should not only be expected, but understood as an indicator of success in challenging tolerance and increasing women’s sense that they have a right to protection and redress.

## ANNEX II

### Special Procedures' 2008 country visits

In 2008 Special Procedures undertook 51 fact finding country visits to 45 countries (including follow up visits).

As of May 2009, 65 States had extended a standing invitation to all thematic special procedures.

Country	Mandate	Date of visit
Afghanistan	<ul style="list-style-type: none"> <li>• SR on summary executions, Mr. Philip Alston</li> </ul>	5-15 May 2008
Argentina	<ul style="list-style-type: none"> <li>• Working Group on enforced disappearances, Chairperson-Rapporteur Mr. Santiago Corcuera Cabezut</li> </ul>	20-24 August 2008
Brazil	<ul style="list-style-type: none"> <li>• SR on indigenous people, Mr. James Anaya</li> </ul>	14-25 August 2008
Central African Republic	<ul style="list-style-type: none"> <li>• SR on summary executions, Mr. Philip Alston</li> </ul>	31 January-2 February 2008
Colombia	<ul style="list-style-type: none"> <li>• Working Group on Arbitrary Detention, Chairperson-Rapporteur Ms. Manuela Carmena Castrillo</li> <li>• RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	1- 10 October 2008 3-14 November 2008
Ivory Coast	<ul style="list-style-type: none"> <li>• SR on toxic waste, Mr. Okechukwu Ibeanu</li> </ul>	3-8 August 2008
Democratic Republic of the Congo	<ul style="list-style-type: none"> <li>• RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	21 January- 3 February 2008
Denmark	<ul style="list-style-type: none"> <li>• SR torture, Mr. Manfred Nowak</li> </ul>	2 -10 May 2008
Ecuador	<ul style="list-style-type: none"> <li>• IE on human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona</li> </ul>	10-14 November 2008
Equatorial Guinea	<ul style="list-style-type: none"> <li>• SR on torture, Mr. Manfred Nowak</li> </ul>	9-18 November 2008
Estonia	<ul style="list-style-type: none"> <li>• SR on the sale of children, Ms. Najat M'jid Maala</li> </ul>	20-24 October 2008
Georgia	<ul style="list-style-type: none"> <li>• RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	1 to 4 October 2008
Greece	<ul style="list-style-type: none"> <li>• IE on minority issues, Ms. Gay McDougall</li> </ul>	8 to 16 September 2008
Guatemala	<ul style="list-style-type: none"> <li>• SRSR on the situation of human rights defenders, Ms. Hina Jilani</li> <li>• SR on migrants, Mr. Jorge A. Bustamante</li> <li>• SR on the right to education, Mr. Vernon Munoz Villalobos</li> </ul>	18-19 February 2008 24-28 March 2008 21-28 July 2008
Guyana	<ul style="list-style-type: none"> <li>• IE on minority issues, Ms. Gay McDougall</li> </ul>	28 July to 2 August 2008
Haiti	<ul style="list-style-type: none"> <li>• IE on the situation of human rights in</li> </ul>	17-28 November 2008



	Haiti, Mr. Michel Forst	
India	<ul style="list-style-type: none"> <li>SR on freedom of religion or belief, Ms. Asma Jahangir</li> </ul>	3-20 March 2008
Israel	<ul style="list-style-type: none"> <li>SR on freedom of religion or belief , Ms. Asma Jahangir</li> </ul>	20-27 January 2008
Italy	<ul style="list-style-type: none"> <li>Working Group on Arbitrary Detention, Chairperson-Rapporteur Ms. Manuela Carmena Castrillo</li> </ul>	3-14 November 2008
Japan	<ul style="list-style-type: none"> <li>SR on the situation of human rights in DPRK, Mr. Vitit Muntabhorn</li> </ul>	15-19 January 2008
Kenya	<ul style="list-style-type: none"> <li>RSG on internally displaced persons, Mr. Walter Kalin</li> </ul>	19-23 March 2008
Latvia	<ul style="list-style-type: none"> <li>SR on the sale of children, Ms. Najat M'jid Maala</li> </ul>	25-30 October 2008
Liberia	<ul style="list-style-type: none"> <li>IE on the situation of human rights in Liberia. Mr. Shamsul Bari</li> </ul>	6 to 20 July 2008
Mauritania	<ul style="list-style-type: none"> <li>SR on racism, Mr. Doudou Diène</li> <li>Working Group on Arbitrary Detention, Chairperson-Rapporteur Ms. Manuela Carmena Castrillo</li> </ul>	20 to 24 January 2008 19 February -3 March 2008
Mexico	<ul style="list-style-type: none"> <li>SR migrants, Mr. Jorge A. Bustamante</li> </ul>	9-18 March 2008
Moldova (Republic of )	<ul style="list-style-type: none"> <li>Joint visit: SR on torture, Mr. Manfred Nowak and SR on violence against women, Ms. Yakin Erturk</li> </ul>	4-11 July 2008
Myanmar	<ul style="list-style-type: none"> <li>SR on the situation of human rights in Myanmar, Mr. Thomas Ojea Quintana</li> </ul>	3-7 August 2008
Nepal	<ul style="list-style-type: none"> <li>SR on indigenous people, Mr. James Anaya</li> </ul>	24 November -2 December 2008
Netherlands	<ul style="list-style-type: none"> <li>SR on toxic waste, Mr. Okechukwu Ibeanu</li> </ul>	26-28 November 2008
Palestine and OPT	<ul style="list-style-type: none"> <li>SR on freedom of religion or belief, Ms. Asma Jahangir</li> </ul>	20-27 January 2008
Republic of Korea	<ul style="list-style-type: none"> <li>SR on the situation of human rights in DPRK, Mr. Vitit Muntabhorn</li> </ul>	19-24 January 2008 and 27-31 October 2008
Russian Federation	<ul style="list-style-type: none"> <li>SR on independence of judges and lawyers, Mr. Leandro Despouy</li> </ul>	19-29 May 2008
Saudi Arabia	<ul style="list-style-type: none"> <li>SR on violence against women, Ms. Yakin Ertürk</li> </ul>	4 -13 February 2008
Spain	<ul style="list-style-type: none"> <li>SR on human rights while countering terrorism, Mr. Martin Scheinin</li> </ul>	7-14 May 2008
Sudan	<ul style="list-style-type: none"> <li>SR on the situation of human rights in Sudan, Ms. Sima Samar</li> </ul>	27 February-10 March 2008 and 29 June -13 July 2008
Tajikistan	<ul style="list-style-type: none"> <li>SR on violence against women, Ms. Yakin Erturk</li> </ul>	15-23 May 2008
Tanzania	<ul style="list-style-type: none"> <li>SR on toxic waste Mr. Okechukwu</li> </ul>	21-30 March 2008

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Thailand	<ul style="list-style-type: none"> <li>• SR on the situation of human rights in Myanmar, Mr. Tomás Ojea Quintana</li> </ul>	6-13 August 2008
Timor -Leste	<ul style="list-style-type: none"> <li>• RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	7-12 December 2008
Togo	<ul style="list-style-type: none"> <li>• SR on human rights defenders, Ms. Hina Jilani</li> </ul>	28 July -3 August 2008
Turkey	<ul style="list-style-type: none"> <li>• SR on violence against women, Ms. Yakin Erturk</li> </ul>	31 October- 1 November 2008
Turkmenistan	<ul style="list-style-type: none"> <li>• SR on freedom of religion or belief, Ms. Asma Jahangir</li> </ul>	4-10 August 2008
Ukraine	<ul style="list-style-type: none"> <li>• Working Group on Arbitrary Detention, Chairperson-Rapporteur Ms. Manuela Carmena Castrillo</li> </ul>	22 October -5 November 2008
United Kingdom of Great Britain and Northern Ireland	<ul style="list-style-type: none"> <li>• Working Group on the use of mercenaries, Chairperson-Rapporteur Alexander Nikitin</li> </ul>	26-30 May 2008
United States of America	<ul style="list-style-type: none"> <li>• SR on racism, Mr. Doudou Diène</li> <li>• SR on summary executions, Mr. Philip Alston</li> </ul>	19 May-6 June 2008 6-26 June 2008