

# **COMPILATION OF SPECIAL PROCEDURES' RECOMMENDATIONS**

## **BY COUNTRY**

**2007**

The present document compiles conclusions and recommendations by thematic and country-specific special procedures contained in their reports submitted to the Human Rights Council from the fourth session<sup>1</sup> (12-30 March 2007) to the sixth session (10-20 September and 10-14 December 2007).

The document was prepared on the basis of the Commission on Human Rights' resolution 2004/76 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, including the relevant comments of States thereto as published within the United Nations system". Regularly updated versions of this document will be posted on the OHCHR's web site.

In addition, for ease of reference, this document now contains an annex with conclusions and recommendations from special procedures' annual and thematic reports submitted in 2007.

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 the following address:

<http://www2.ohchr.org/english/bodies/chr/special/visits.htm>

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<sup>1</sup> Previous annual compilations are available on the OHCHR website (under Information tools):  
<http://www2.ohchr.org/english/bodies/chr/special/index.htm>

## Special Procedures' 2007 country visits

In 2007 Special Procedures undertook **62 fact finding country visits to 51 countries** (including follow up visits)

As of August 2008, 62 States had extended a standing invitation to all thematic special procedures

Country	Mandate	Date of visit
<b>Algeria</b>	<ul style="list-style-type: none"> <li>SR on violence against women, Ms. Yakin Ertürk</li> </ul>	21 January - 1 February 2007
<b>Angola</b>	<ul style="list-style-type: none"> <li>WG on arbitrary detention, Chairperson: Ms. Leila Zerrougui</li> </ul>	17 - 27 September 2007
	<ul style="list-style-type: none"> <li>SR on freedom of religion, Ms. Asma Jahangir</li> </ul>	20 - 27 November 2007
<b>Azerbaijan</b>	<ul style="list-style-type: none"> <li>RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	2 - 6 April 2007
	<ul style="list-style-type: none"> <li>SR on freedom of expression, Mr. Ambeyi Ligabo</li> </ul>	22 - 28 April 2007
<b>Bolivia</b>	<ul style="list-style-type: none"> <li>SR on the right to food, Mr. Jean Ziegler</li> </ul>	28 April - 8 May 2007
	<ul style="list-style-type: none"> <li>SR on indigenous people, Mr. Rodolfo Stavenhagen</li> </ul>	25 November - 6 December 2007
<b>Bosnia and Herzegovina</b>	<ul style="list-style-type: none"> <li>SR on the right to education, Mr. Vernor Munoz Villalobos</li> </ul>	24 September - 3 October 2007
<b>Brazil</b>	<ul style="list-style-type: none"> <li>SR on summary executions, Philip Alston</li> </ul>	4 - 14 November 2007
<b>Burkina Faso</b>	<ul style="list-style-type: none"> <li>IE on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, Mr. Bernards Andrew Nyamwaya Mudho</li> </ul>	23 - 27 April 2007
<b>Burundi</b>	<ul style="list-style-type: none"> <li>SR on the situation of human rights in Burundi, Mr. Akich OKOLA</li> </ul>	14 - 27 January 2007
<b>Cambodia</b>	<ul style="list-style-type: none"> <li>SRSR on human rights in Cambodia, Mr. Yash Ghai</li> </ul>	29 - 31 May 2007
<b>Canada</b>	<ul style="list-style-type: none"> <li>SR on adequate housing, Mr. Miloon Kothari</li> </ul>	8 - 19 October 2007
<b>Central African Republic</b>	<ul style="list-style-type: none"> <li>RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	24 February - 3 March 2007
<b>Chile</b>	<ul style="list-style-type: none"> <li>WG on the use of mercenaries, Chairperson: Mr. José Gomez Del Prado</li> </ul>	9 - 13 July 2007
<b>Colombia</b>	<ul style="list-style-type: none"> <li>SR on the right to health, Mr. Paul Hunt</li> </ul>	20 - 23 September 2007
<b>Cuba</b>	<ul style="list-style-type: none"> <li>SR on the right to food, Mr. Jean Ziegler</li> </ul>	28 October - 6 November 2007
<b>Democratic Republic of the Congo</b>	<ul style="list-style-type: none"> <li>SR on the independence of judges and lawyers, Mr. Leandro Despouy</li> </ul>	15 - 21 April 2007
	<ul style="list-style-type: none"> <li>SR on violence against women, Ms. Yakin Ertürk</li> </ul>	16 - 28 July 2007

	<ul style="list-style-type: none"> <li>• IE on human rights in the DRC, Mr. Titinga Frédéric Pacéré</li> </ul>	27 November - 6 December 2007
<b>Dominican Republic</b>	<ul style="list-style-type: none"> <li>• Joint visit SR on racism and IE on minorities, Mr. Doudou Diène and Ms. Gay McDougall</li> </ul>	23 - 29 October 2007
<b>Ecuador</b>	<ul style="list-style-type: none"> <li>• SR on the right to health, Mr. Paul Hunt</li> </ul>	14 - 18 May 2007
<b>El Salvador</b>	<ul style="list-style-type: none"> <li>• WG on enforced disappearances, Chairperson: Mr. Santiago Corcuera</li> </ul>	5 - 7 February 2007
<b>Equatorial Guinea</b>	<ul style="list-style-type: none"> <li>• WG on arbitrary detention, Chairperson: Ms. Leila Zerrougui</li> </ul>	8 - 14 July 2007
<b>Estonia</b>	<ul style="list-style-type: none"> <li>• SR on racism, Mr. Doudou Diène</li> </ul>	16 - 28 September 2007
<b>Fiji</b>	<ul style="list-style-type: none"> <li>• WG on the use of mercenaries, Chairperson: Mr. José Gomez Del Prado</li> </ul>	14 - 18 May 2007
<b>France</b>	<ul style="list-style-type: none"> <li>• IE on minorities, Ms. Gay McDougall</li> </ul>	19 - 28 September 2007
<b>Ghana</b>	<ul style="list-style-type: none"> <li>• SR on violence against women, Ms. Yakin Ertürk</li> </ul>	9 - 15 July 2007
<b>Haiti</b>	<ul style="list-style-type: none"> <li>• IE on the situation of human rights in Haiti, Mr. L. Joinet</li> </ul>	21 - 31 May 2007
<b>Honduras</b>	<ul style="list-style-type: none"> <li>• WG on enforced disappearances, Chairperson: Mr. Santiago Corcuera</li> </ul>	31 January - 2 February 2007
	<ul style="list-style-type: none"> <li>• SR on freedom of expression, Mr. Ambeyi Ligabo</li> </ul>	26 - 30 November 2007
<b>India</b>	<ul style="list-style-type: none"> <li>• SR on the right to health, Mr. Paul Hunt</li> </ul>	22 November - 3 December 2007
<b>Indonesia</b>	<ul style="list-style-type: none"> <li>• SRSR on the situation of human rights defenders, Ms. Hina Jilani</li> </ul>	5 - 13 June 2007
	<ul style="list-style-type: none"> <li>• SR on torture, Mr. Manfred Nowak</li> </ul>	10 - 23 November 2007
<b>Israel</b>	<ul style="list-style-type: none"> <li>• SR on human rights while countering terrorism, Mr. M. Scheinin</li> </ul>	3 - 10 July 2007
<b>Latvia</b>	<ul style="list-style-type: none"> <li>• SR on racism, Mr. Doudou Diène</li> </ul>	16 - 28 September 2007
<b>Liberia</b>	<ul style="list-style-type: none"> <li>• IE on the situation of human rights in Liberia, Ms. Charlotte Abaka</li> </ul>	16 - 30 September 2007
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>• SR on racism, Mr. Doudou Diène</li> </ul>	16 - 28 September 2007
<b>Macedonia (former Yugoslav Republic of)</b>	<ul style="list-style-type: none"> <li>• Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani</li> </ul>	23 to 25 September 2007
<b>Malaysia</b>	<ul style="list-style-type: none"> <li>• SR on the right to education, Mr. Vernor Muñoz Villalobos</li> </ul>	5 - 14 February 2007
<b>Maldives</b>	<ul style="list-style-type: none"> <li>• SR on independence of judges and lawyers, Mr. Leandro Despouy</li> </ul>	25 February - 1 March 2007
<b>Mexico</b>	<ul style="list-style-type: none"> <li>• SR on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit</li> </ul>	4 - 14 May 2007
<b>Myanmar</b>	<ul style="list-style-type: none"> <li>• SR on the situation of human rights in Myanmar, Mr. Paulo Sergio Pinheiro</li> </ul>	11 - 15 November 2007
<b>Nigeria</b>	<ul style="list-style-type: none"> <li>• SR on torture, Mr. Manfred Nowak</li> </ul>	4 - 11 March 2007

<b>Norway</b>	<ul style="list-style-type: none"> <li>• WG on arbitrary detention, Chairperson: Ms. Leila Zerrougui</li> </ul>	23 April - 2 May 2007
<b>Palestine &amp; OPT (Observer state)</b>	<ul style="list-style-type: none"> <li>• SR on the situation of human rights in the OPT, Mr. John Dugard</li> </ul>	22 September - 3 October 2007
<b>Peru</b>	<ul style="list-style-type: none"> <li>• WG on the use of mercenaries, Chairperson: Mr. José Gomez Del Prado</li> </ul>	29 January - 2 February 2007
<b>Philippines</b>	<ul style="list-style-type: none"> <li>• SR on extrajudicial, summary or arbitrary executions, Mr. Philip Alston</li> </ul>	12 - 21 February 2007
<b>Serbia (including Kosovo) (since 28 June 2006)</b>	<ul style="list-style-type: none"> <li>• SRSG on the situation of human rights defenders, Ms. Hina Jilani</li> </ul>	17 - 21 September 2007
<b>Somalia</b>	<ul style="list-style-type: none"> <li>• IE on human rights in Somalia, Mr. Ghanim Alnajjar</li> </ul>	17 - 21 September 2007
<b>South Africa</b>	<ul style="list-style-type: none"> <li>• SR on human rights while countering terrorism, Mr. M. Scheinin</li> </ul>	16 - 27 April 2007
	<ul style="list-style-type: none"> <li>• SR on adequate housing, Mr. Miloon Kothari</li> </ul>	12 - 24 April 2007
<b>Sri Lanka</b>	<ul style="list-style-type: none"> <li>• SR on torture, Mr. Manfred Nowak</li> </ul>	1 - 8 October 2007
	<ul style="list-style-type: none"> <li>• RSG on internally displaced persons, Mr. Walter Kälin</li> </ul>	14 - 21 December 2007
<b>Sudan</b>	<ul style="list-style-type: none"> <li>• SR on the situation of human rights in Sudan, Ms. S. Samar</li> </ul>	25 July - 2 August 2007
<b>Tajikistan</b>	<ul style="list-style-type: none"> <li>• SR on freedom of religion, Ms. Asma Jahangir</li> </ul>	26 February - 3 March 2007
<b>Togo</b>	<ul style="list-style-type: none"> <li>• SR on torture, Mr. Manfred Nowak</li> </ul>	10 - 17 April 2007
<b>Uganda</b>	<ul style="list-style-type: none"> <li>• SR on the right to health, Mr. Paul Hunt</li> </ul>	4 - 9 February 2007
<b>Ukraine</b>	<ul style="list-style-type: none"> <li>• SR on adverse effects of toxic waste, Mr. Okechukwu Ibeanu</li> </ul>	22 - 30 January 2007
	<ul style="list-style-type: none"> <li>• SR on freedom of expression, Mr. Ambeyi Ligabo</li> </ul>	14 - 20 May 2007
<b>United Kingdom of Great Britain and Northern Ireland</b>	<ul style="list-style-type: none"> <li>• SR on freedom of religion, Ms. Asma Jahangir</li> </ul>	4 - 15 June 2007
<b>United States of America</b>	<ul style="list-style-type: none"> <li>• SR on the human rights of migrants, Mr. J. A. Bustamante</li> </ul>	20 April - 18 May 2007
	<ul style="list-style-type: none"> <li>• SR on human rights while countering terrorism, Mr. M. Scheinin</li> </ul>	16 - 25 May 2007

For Press releases on country visits please visit:

<http://www2.ohchr.org/english/bodies/chr/special/press2007.htm>

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## Democratic Republic of the Congo

### Introduction

During the period under review, the Special Rapporteur on the independence of judges and lawyers visited from the Democratic Republic of the Congo from 15 to 21 April 2007 (please refer to document A/HRC/4/25/Add.3).

### Preliminary recommendations

7. In view of these observations, the Special Rapporteur makes the following preliminary recommendations:

(a) 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, 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:

(i) 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 improve judges' pay, recruit new judges, give them the premises and operational capacity (transport, information technology, etc.) they need to perform their duties, and establish new courts, especially magistrates' courts;

(ii) 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 supports the work of the Joint Committee to Monitor the Justice Framework Programme in the Democratic Republic of the Congo, which brings the Justice Ministry together with donors. On the basis of the results of the organizational audit of the Congolese judicial system conducted, by agreement with the Government of the Democratic Republic of the Congo, in 2004 by the European Commission in partnership with Belgian and French development cooperation institutions, the United Kingdom Department for International Development (DFID), UNDP, MONUC and the Office of the United Nations High Commissioner for Human Rights, the Committee intends to draft a plan of action to give effect to the justice framework programme. The Special Rapporteur is convinced that this Committee's work is critical to strengthening the country's judicial system. Having noted delays in the drafting of the plan, however, he encourages Committee members to press on with their work so that the plan can be adopted as soon as possible. The implementation of specific measures to rebuild and support the judicial system should begin in 2007;

(iii) 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.

(b) To give effect to the constitutional framework and ensure that judicial independence does not remain a dead letter, a number of laws must be adopted as a matter of urgency:

(i) A law on the organization of the Higher Council of the Judiciary, a key body that will be responsible for appointing, promoting and disciplining judges, thereby safeguarding their independence while at the same time providing adequate supervision of their conduct, and for drawing up the judicial system's budget, which is the key to its independence and effectiveness;

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

(iii) Laws establishing the Court of Cassation, the Constitutional Court and the Conseil d'État.

(c) The training of judges, especially in ethics, professional conduct and international human rights standards, and the training of auxiliary staff should be considerably strengthened. There is no body offering training to judges and judicial auxiliary staff before they assume office. A college for the judiciary and a college for the professional training of judicial auxiliary staff should be established as soon as possible.

(d) In order to guarantee the right to a defence, a right recognized in the Constitution, the State should establish a system for paying duty lawyers, for example, through bar associations, to ensure that poor people can have a high quality defence.

(e) The reconstruction of the judicial system should be based on a strengthened civilian judicial system, which should have sole jurisdiction to judge civilians and cases of human rights violations committed by the armed forces or the police. The jurisdiction of the military tribunals should be gradually limited to offences of a purely military nature.

(f) The use of preventive detention must 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.

(g) A system for monitoring the enforcement of judgements should be established, as should a mechanism to ensure that the legal costs of poor people are met by the State.

(h) 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.

8. In talks with the Special Rapporteur, the Government recognized that an independent and effective judiciary is the backbone of the rule of law and the country's development. It also recognized that the judicial system is in a critical state, and urgently needs to be strengthened. The Special Rapporteur reiterates that it is vital for the new Government to make the reconstruction and strengthening of the judicial system a priority in its programme for the democratic consolidation of the country, and he encourages the Government in its intended endeavours.



## Israel

### Introduction

During the period under review, the Special Rapporteur on human rights while countering terrorism visited Israel from 3 to 10 July 2007 (please refer to document A/HRC/6/17/Add.4).

### Conclusions (A/HRC/6/17/Add.4, para. 54)

54. The Special Rapporteur is encouraged by the reconsideration by Israel of its derogation from aspects of the International Covenant on Civil and Political Rights, and its invitation to him to comment upon new counter-terrorism legislation currently being drafted. He identifies this cooperative enterprise as one to be commended as an element of best practice. He has, in contrast, also identified serious situations of incompatibility of the country's obligations pertaining to human rights and fundamental freedoms with its counter-terrorism law and practice. Such situations include the prohibition of torture or cruel, inhuman or degrading treatment; the right to life and humanitarian law principles concerning legitimate targeting; the right to liberty and fair trial; and the severe impact of the construction of the barrier in the West Bank and associated measures on the enjoyment of civil, cultural, economic, political and social rights and freedoms in the Occupied Palestinian Territory. Addressing the full range of those situations is imperative, not only to secure compliance by Israel with its international obligations but also to address conditions that may be conducive to recruitment to terrorism.

### Recommendations (A/HRC/6/17/Add.4, paras. 55-62)

55. The Special Rapporteur recommends that Israel, in the development of its counter-terrorism legislation, ensure that definitions of terrorism and security suspects are precise and limited to the countering of terrorism and the maintenance of national security, respectively. Definitions surrounding the countering of terrorism should be restricted to the suppression and criminalization of acts of deadly or otherwise serious physical violence against civilians, i.e., members of the general population or segments of it, or the taking of hostages, coupled with the cumulative conditions identified by the Security Council in its resolution 1566 (2004). All legislation, regulations and military orders must comply with the requirements of the principle of legality with regard to accessibility, precision and non-retroactivity. Having achieved those requirements, the enactment by the Knesset of this new legislation should be accompanied by a repeal or revocation of all current counter-terrorism legislation, regulations and military orders. He further recommends that the Incarceration of Unlawful Combatants Law be repealed, without replacement.

56. The Special Rapporteur is encouraged by the decision of the Supreme Court of Israel regarding interrogation techniques by the Israeli Security Agency, but recommends that urgent steps be taken to ensure full compliance with that decision and associated international obligations. Since the proper application of the necessity defence under article 34 (11) of the Penal Law cannot validate conduct amounting to torture or cruel, inhuman or degrading treatment, the Special Rapporteur recommends that steps be taken to establish mechanisms by which victims of such conduct are provided with an effective remedy. Given the concerns that the Special Rapporteur has with the independence of the Israeli Security Agency complaints inspector, the non-derogable and peremptory nature of the prohibitions, and the apparent lack of understanding by Israeli Security Agency officers of the parameters of the necessity defence, he further recommends that all complaints of torture or cruel, inhuman or degrading treatment be referred to the Attorney General's office for the immediate filing of criminal

charges against the individual interrogator wherever such complaints point to conduct that, if proven, would amount to torture or cruel, inhuman or degrading treatment, and that only the courts may pronounce on the applicability and effect of the necessity defence.

57. With regard to arrest and detention, the Special Rapporteur recommends that Israel take steps to ensure that all persons are informed of the reasons for their detention at the time of their arrest. He recommends the amendment of the Criminal Procedures (Non-Resident Detainee Suspected of Security Offense) (Temporary Provision) Law 2006 to ensure that security suspects are provided with immediate and continued access to legal counsel and, where appropriate, family visits. In the context of administrative detention, he recommends that the terms “security of the area” and “public security”, currently under Military Order 1229, be defined with precision, and that steps be taken, such as the establishment of a panel of security-cleared counsel, to ensure that representations are able to be made to the district court on behalf of a detainee upon the making or extension of administrative detention orders. The practice of military or other courts authorizing administrative detention on the basis of evidence available neither to the detainee nor counsel should be discontinued as incompatible with article 14 (1) of the International Covenant on Civil and Political Rights.

58. The Special Rapporteur urges that care be taken to ensure that counter-terrorism law and practice never be used as a means of preventing or undermining the development of democracy in Palestinian territory. He further urges Israel to ensure that the detention or imprisonment of a child be used as a measure of last resort, that solitary confinement never be used by prison authorities as a means of coercion or punishment of children, and that all facilities in which children are detained provide educational care appropriate to the age of each child.

59. Given the illegality under international law of the existence and continued development of Jewish settlements in the Occupied Palestinian Territory, the Special Rapporteur recommends that a decision be made immediately to withdraw all such settlements and to replace the still unfinished barrier, extending deep into Palestinian territory, with a security infrastructure that, by its geographical position, respects the Green Line or is otherwise accepted by the Palestinians. During the process of implementing such a decision, the Special Rapporteur recommends urgent action to ensure that the permits regime, the administration of checkpoints, and all other associated measures in the Occupied Palestinian Territory do not have a disproportionate impact on the enjoyment of civil, cultural, economic, political and social rights in the territory. He also recommends that security measures be civilianized through means other than their privatization.

60. The Special Rapporteur urges Israel to respect the rules of international humanitarian law, including the fundamental requirement of distinguishing between civilians and military objectives when resorting to the use of force. This must be the case irrespective of whether Israel is responding to an armed attack from Gaza, Lebanon or elsewhere and whether it classifies the attack as terrorism.

61. The Special Rapporteur urges Israel to ensure that any demolition of housing or other destruction of private property conducted as a measure aimed at combating or preventing terrorism is resorted to in strict compliance with international law and is accompanied by adequate reparation. Due to the high emotional impact of such measures easily leading to counterproductive effects in a sustainable fight against terrorism, the Special Rapporteur recommends that the Government of Israel exercise extreme caution in resorting to such measures.

62. While acknowledging that military necessity may dictate the deliberate killing of enemy combatants during an armed conflict, the Special Rapporteur recommends that transparent laws and guidelines on the practice of targeted killings be established, and that they be strictly

limited to persons directly participating in hostilities and as a means of last resort after all possible measures to apprehend the person have been taken. All such killings must be followed by a thorough and independent investigation as to the accuracy of the identification of the target, whether alternative means were available, and whether the action was undertaken in a manner ensuring that no civilian casualties were caused. The result of such investigations should be made public and, where violations of law are established, adequate reparation made.

## 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/6/14).

### Conclusion (A/HRC/6/14, paras. 69-75)

69. The Special Rapporteur has shared this report and a list of names of 653 persons detained, 74 persons disappeared and 16 killed (in addition to the list of 15 dead provided by the authorities), with the Government of Myanmar for comments. The list contains only those incidents where the names of the people involved are cited. There are a number of incidents where no names were reported but where there were allegations of groups of people reportedly killed which have also been shared. This list will be updated on a regular basis and used as the basis for an ongoing dialogue with the authorities.

70. The Special Rapporteur expresses his hopes for positive change from Myanmar's engagement with its international and regional counterparts, in particular through the Association of Southeast Asian Nations (ASEAN) Charter, signed by Myanmar, which includes a firm commitment to international human rights and humanitarian principles and pledges to set up a dedicated ASEAN human rights body. The Special Rapporteur would further like to re-emphasize a strong call for the authorities to re-engage with the International Committee of the Red Cross (ICRC) in providing free access to detention centres.

71. The incidents reported demonstrate the vulnerability of the economic and social foundations of Myanmar's society. It shows that the right to freedom of expression and the right to peaceful assembly have yet to be fully guaranteed and the tremendous challenges faced by Myanmar in ensuring the rule of law by holding accountable the perpetrators of serious criminal acts documented in this report. It further reveals the urgent need to repeal or amend old laws and regulations in accordance with international human rights standards, and to reconsider the participation of the army and non law enforcement officials in policing demonstrations.

72. Moreover, the events represent a compelling example of the indivisibility of human rights. Decades of denial of basic civil and political rights have compromised the standard of living of the population. By severely restricting the right to freedom of expression and the right to peaceful assembly, the Government has prevented over many years the emergence of a platform for genuine public dialogue, where people could share their concerns over their increasing lack of access to job opportunities and basic social services, including health and food.

73. In that context, the decision by the Government to authorize the Special Rapporteur to visit Myanmar should be praised. By allowing the Special Rapporteur to conduct an official visit, the Government has re-engaged in a dialogue with the United Nations human rights mechanisms and allowed an inquiry into the events of September and October 2007. The Special Rapporteur hopes the authorities will provide him with the further information requested regarding the whereabouts of the detained, the conditions of their detention, numbers of released people and the causes of death. The Government provided him with a number of detailed records that responded partially to his requests. He will continue to liaise with the Government on the matter.

74. The Special Rapporteur, however, did not find significant signs that the Government is implementing the substantive demands as set out in Human Rights Council resolution S-5/1, operative paragraphs 2, 3 and 4 urging the Government of Myanmar inter alia to:

“ensure full respect for human rights and fundamental freedoms and to investigate and bring to justice perpetrators of human rights violations, including the recent violations of the rights of peaceful protesters;”

“release without delay those arrested and detained as a result of the recent repression of peaceful protests, as well as to release all political detainees in Myanmar, including Daw Aung San Suu Kyi, and to ensure that conditions of detention meet international standards and include the possibility of visiting any detainee;”

“lift all restraints on peaceful political activity of all persons by, inter alia, guaranteeing freedom of peaceful assembly and association and freedom of opinion and expression, including for free and independent media, and to ensure unhindered access to media information for the people of Myanmar.”

75. The Special Rapporteur regrets that he was unable to meet with the General Secretary of the NLD, Daw Aung San Suu Kyi which would have benefitted the independence of his investigations, but was reassured by the authorities that this option will remain on the agenda of his follow-up missions. The Special Rapporteur recognizes the need for close coordination with the good offices of the Secretary-General and is in regular contact with Mr. Ibrahim Gambari on the matter.

#### **Recommendations** (A/HRC/6/14, para. 76)

76. In light of the objectives of his mission to Myanmar, and of recommendations already made in his previous reports, the Special Rapporteur suggests a number of immediate and transitional measures to be addressed to the Government of Myanmar.

#### Immediate measures

- (i) To secure the physical and psychological integrity of all persons who are kept in custody;
- (ii) To reveal the whereabouts of people who are still detained or missing;
- (iii) To return the remains of the deceased to families or relatives in order to enable them to give their dead proper funerals in accordance with their religion and belief;
- (iv) To ensure immediate access by the ICRC and other independent humanitarian personnel to all detainees;
- (v) To release unconditionally all persons who have been taken into custody for peaceful assembly or the peaceful expression of their political beliefs;
- (vi) 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;
- (vii) To conduct an independent and thorough investigation into the killings, severe beatings, hostage taking, torture and disappearances;
- (viii) To ban militia as an illegal group in accordance with the law of Myanmar;
- (ix) To bring the perpetrators of human rights violations to justice and to provide the victims and their families with effective remedies;
- (x) 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;
- (xi) To agree with the Special Rapporteur on the situation of human rights in Myanmar on the terms of reference and dates for his next visit to the country;
- (xii) To invite an international commission of inquiry or fact-finding mission to investigate in a more comprehensive manner the recent events.

## Transitional measures

- (xiii) To develop an effective channel for follow-up communications and cooperation with the Special Rapporteur and provide him and his support team with regular access to the country;
- (xiv) To consider the implementation of the plan of action for the release of all political prisoners as suggested by the Special Rapporteur in his last report to the General Assembly (A/62/223);
- (xv) To pursue the dialogue with Daw Aung San Suu Kyi through the Minister of Labour and Liaison Minister;
- (xvi) To repeal or amend old 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;
- (xvii) Within the context of the National Convention and recent crisis, 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.

## South Africa

### Introduction

During the period under review, the Special Rapporteur on human rights while countering terrorism visited South Africa from 16 to 27 April 2007 (please refer to document A/HRC/6/17/Add.2).

### Conclusions (A/HRC/6/17/Add.2, paras, 60-70)

60. South Africa has undergone a remarkable transition from the apartheid regime to a pluralistic democracy, founded firmly on the 1995 Constitution. South Africa is party to most major international human rights treaties, and has sought to build its society firmly on the foundation of human rights, enshrined in the Bill of Rights in the Constitution. Also in its counter-terrorism policies and legislation, it has sought an overall framework for addressing security concerns related to terrorism without undermining the protections of the Constitution. The Special Rapporteur rests assured that this foundation will help to ensure that counter-terrorism measures will be used properly, and not as previously applied during the apartheid regime, as a vehicle of repression and for the suppression of dissent.

61. The Special Rapporteur commends South Africa for the thorough consultative process, including in Parliament, preceding the adoption of the Act on Protecting Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA). In this process, legitimate concerns were taken into account inter alia concerning the right to labour action, and to the risks of human rights violations involved in administrative detention.

62. The definition of terrorism in the counter-terrorism law, when read cumulatively, is relatively narrow in scope. However, many of the acts listed as potentially constituting terrorist acts do not, as to their level of severity or the harm caused, reach the threshold of what legitimately can be considered terrorist acts. Hence, this part of the definition may give the wrong impression of the definition being broader than it is when properly applied.

63. The criminal proceedings pursuant to the counter-terrorism act basically fall under general South African criminal law and all its safeguards. However, in the context of countering terrorism, national legislation is often borrowed and copied by other countries in a piecemeal way, and if sections of this Act are inserted into a national framework with less developed legal safeguards, a situation may arise where human rights are threatened. Given the important role South Africa has on the African continent, this is a matter of concern.

64. The authorities clearly state that racial/ethnic/religious profiling are neither a part of the collection of intelligence or used in investigations, but rather any profiling is based on individual behaviour.

65. There are no provisions of administrative detention in the South African counter-terrorism law. Nevertheless, immigration detention, in particular of illegal immigrants facing deportation and seen as a security threat, may in fact face detention without trial in South Africa despite the broadly shared sentiment against such practices.

66. The Special Rapporteur notes the enormous task in the post-apartheid era of creating law enforcement agencies which have legitimacy through the adherence to laws and to human rights standards. Important improvements have taken place, but reports of police brutality still surface, which may also hamper effective investigations in terrorism-related cases. The

Independent Complaints Directorate has an important role in investigating and issuing decisions concerning police misconduct.

67. South Africa is an important destination of immigrants and asylum-seekers. The Constitution of South Africa to a great extent gives human rights protections to all persons in South Africa, which in the Special Rapporteur's view is the correct approach in the light of international human rights law, and is commendable. However, in practice, immigrants and asylum-seekers face serious difficulties, inter alia, in the fields of housing and health care. A special concern is the lack of legal safeguards for detained immigrants, and the protections against refoulement in immigration and extradition legislation.

68. The recently passed Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflict Act provides an important framework for addressing the involvement of South African nationals and companies and residents of South Africa as private security or military contractors. This is an important step for improving South Africa's accountability for human rights violations in the context of countering insurgence or terrorism by means of armed intervention.

69. The issue of xenophobia against the immigrant community of South Africa was discussed in a number of the Special Rapporteur's meetings. The Special Rapporteur finds that, as part of a preventive approach to counter-terrorism, firmer action is needed to address violence and other expressions of xenophobia towards immigrants, both from private individuals and any government actors.

70. South Africa plays an important role in regional and subregional efforts to counter terrorism on the African continent. In particular, the strategic and operative cooperation within the framework of the Southern African Regional Police Chiefs Cooperation Organisation appears to be of practical importance for all the countries involved. The mainstreaming of the promotion and protection of human rights in these cooperation measures ought to be a priority of the Government of South Africa.

**Recommendations** (A/HRC/6/17/Add.2, paras. 71-81)

71. The Special Rapporteur recommends that the Government carefully monitor the implementation in jurisprudence of the definition of terrorist acts under POCDATARA, and remain prepared to amend the law, should the interpretation of it suggest a threat to human rights.

72. The practical content of the national procedures for listing individuals subjected to sanctions pursuant to Security Council resolution 1267 (1999), including the availability and modalities of judicial review, ought to be elaborated more clearly by the Government.

73. The Special Rapporteur notes with satisfaction that for the most part, the normal criminal procedure is in place also in terrorism cases. He recommends that South Africa maintain this stance, and also that any special proceedings, for example, in-camera trials in terrorism or other security-related cases, be used very restrictively.

74. For clarity and transparency on the issue of unjustified or disproportionate use of force by the police, the Special Rapporteur draws attention to the concluding observations of the Committee against Torture, which include the recommendation to prohibit in law all forms of torture and ill-treatment, and to incorporate in the law a specific criminalization of torture.

75. The Special Rapporteur also encourages South Africa to put into place a system of reliable statistics related to police brutality with clear parameters and benchmarks for improvement.



Such statistics can be one helpful and transparent component in assessing advances and setbacks in the protection of human rights in law enforcement.

76. The Special Rapporteur recommends the establishment of a general system of independent oversight for the detention of immigrants. This need is particularly urgent in respect of the use of police detention facilities for immigration detention of persons subject to deportation proceedings.

77. The Special Rapporteur recommends re-examining the provisions on immigration detention so that judicial review would be mandatory within, say, 48 hours and that effective access to counsel is guaranteed from the moment of apprehension.

78. The Special Rapporteur recommends amending section 2 of the Refugees Act so as to prohibit the removal of any person, either by extradition, deportation or any other form of removal, to face a real risk of persecution, capital punishment, torture or any form of inhuman, cruel or degrading treatment or punishment, and the inclusion of a provision concerning the prohibition of refoulement in the Extradition and Immigration Acts.

79. The Special Rapporteur recommends that Government and Parliament closely monitor the implementation of the recently adopted Act prohibiting mercenary activities, so that the law prevents the participation of South African individuals or entities as private military and security contractors in counter-insurgency or counter-terrorism operations where human rights may be undermined. He cautions, however, against the law being applied to hinder humanitarian assistance, as such assistance is necessary in the context of armed conflicts in order to protect the right to life.

80. The Special Rapporteur urges the Government of South Africa, as part also of preventative action to counter terrorism, to firmly and promptly implement the recommendations of the Committee on the Elimination of Racial Discrimination of 19 October 2006.

81. The Special Rapporteur commends the Government of South Africa for its efforts to strengthen cooperation and integration on the African continent and in the subregion of Southern Africa. He urges South Africa to ensure the promotion and protection of human rights in all regional and subregional efforts to counter terrorism, be they legislative, strategic or operational in nature.

## Sudan

### Introduction

By its resolution 4/8 of 30 March 2007, the Council appointed the Group of experts on Darfur. In addition to the Special Rapporteur on the situation of human rights in the Sudan, this Group included the Special Representative of the Secretary-General for Children and Armed Conflict; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Representative of the Secretary-General on the situation of human rights defenders; the Representative of the Secretary-General on the human rights of internally displaced persons; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences. The Group was mandated to work with relevant stakeholders, including the Government of the Sudan, to ensure the effective follow-up and to foster the implementation of resolutions and recommendations on Darfur, as adopted by the Council, the Commission on Human Rights and other United Nations human rights institutions (please refer to reports A/HRC/5/6, A/HRC/6/7 and A/HRC/6/19).

1. Report on the situation of human rights in Darfur prepared by the United Nations Experts Group on Darfur, A/HRC/5/6

### Conclusions (A/HRC/5/6, paras.37-42)

37. The experts group shares the concern of the Council, expressed in its resolution 4/8, regarding the seriousness of ongoing violations of human rights and international humanitarian law in Darfur as well as the lack of accountability of perpetrators of such crimes.

38. The experts group believes that the approach chosen by the Human Rights Council through resolution 4/8 provides an opportunity for the Government of the Sudan to demonstrate its commitment to the protection of human rights in accordance with its obligations under international law.

39. The experts group welcomes the expressed commitment of the Government of the Sudan to work with the Council and the United Nations in order to implement pre-existing human rights recommendations and recalls that the current exercise can only be a starting point towards a betterment of the human rights situation in Darfur. While the commitments of the Government and the measures taken are crucial, it is the human rights situation on the ground which will provide the measurement of any improvement.

40. In this regard, the experts group underlines the importance of the work done by UNMIS human rights monitors and other actors in the field and reiterates that human rights monitors must have full and unimpeded access to all relevant areas, including all places where persons are deprived of their liberty as well as to investigation records, and be allowed to interview victims and detainees in private.

41. The experts group welcomes the opportunity to cooperate with the human rights mechanisms of the African Union, including the African Commission of Human and Peoples' Rights and the Darfur-Darfur Dialogue and Consultation and reiterates the importance of those mechanisms to be fully engaged in the process outlined in resolution 4/8.

42. The experts group recalls that all parties involved in the conflict must stand up to their commitments and implement all pre-existing human rights recommendations issued by the United Nations and on all relevant actors involved to address, within the framework of the

implementation of the Abuja Peace Agreement and other appropriate forums, in a comprehensive manner all the obstacles hampering the improvement of the human rights situation in Darfur.

**Recommendations** (A/HRC/5/6, para.43)

43. The experts group recommends that the Human Rights Council:

- (a) Urge the Government of the Sudan to implement, without delay, the recommendations of the experts group it committed itself to put into practice;
- (b) Request the experts group to continue its dialogue with the Government of the Sudan on the implementation of other recommendations made by the Group;
- (c) Request the experts group and other relevant actors to assist, upon its request, the Government of the Sudan to finalize a work plan for the implementation of these recommendations taking into account their short- and medium-term character;
- (d) Invite relevant United Nations bodies and agencies, including the Office of the High Commissioner for Human Rights, to provide the support and technical assistance to the extent necessary for the implementation of these recommendations;
- (e) Call upon donors to provide, on the basis of needs assessment, funds for this support and technical assistance;
- (f) Request the experts group, to review three months subsequent to the presentation of this report to the Human Rights Council, with the full cooperation of the Government of the Sudan, in consultation with the appropriate human rights mechanisms of the African Union and after consultation with the Chairman of the Darfur-Darfur Dialogue and Consultation (DDDC), the level of implementation of these recommendations and to submit a report to the Human Rights Council, at the session subsequent to the completion of the period of three months. Such review should consider information provided by the Government of the Sudan, UNMIS, other United Nations agencies, programmes and human rights mechanisms as well as the African Union and its human rights mechanisms and other actors involved in human rights and humanitarian work in Darfur;
- (g) Reiterate its call upon all parties to the conflict to put an end to all acts of violence against civilians, with a special focus on women and vulnerable groups such as children, the elderly and internally displaced persons, as well as humanitarian workers;
- (h) Call upon the Government of the Sudan to ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that those found to be responsible are promptly brought to justice.

2. Updated report on the situation of human rights in Darfur prepared by the United Nations Experts Group on Darfur, A/HRC/6/7

**Conclusions and recommendations** (A/HRC/6/7, paras. 19-25)

19. The group of experts, taking into account the challenges faced by the Government of the Sudan, welcomes its fresh commitment to work with the Council and the United Nations to implement pre-existing recommendations in the field of human rights. It appreciates the high degree of cooperation, flexibility and openness of its interlocutors during the period under review.

20. The group of experts welcomes the efforts made by the Government of the Sudan towards implementation of its short-term recommendations. It concludes that while certain recommendations have been partially implemented, it is not in a position to report that a clear impact on the ground has been identified. Regarding other recommendations, first steps towards implementation have been taken, whereas still other recommendations remain, at least for the present time, without implementation. The group of experts regrets that certain short term recommendations were not addressed by the Government at all or, in other cases,

information provided was unrelated to them. The group of experts reiterates that the ultimate measure of the Government's implementation of the recommendations compiled by the group has to be concrete improvements in the human rights situation on the ground in Darfur.

21. The group of experts is aware of the short period of time that was available to the Government within the framework of this mandate for implementing the recommendations compiled by the group and its limited financial and human resources. In addition, the dynamics of the conflict with an increasing number of armed actors may render the implementation of certain recommendations difficult. It reiterates, however, that these factors cannot be invoked as obstacles for effectively addressing human rights violations in Darfur.

22. The group of experts reiterates its concern about reports of ongoing serious violations of international humanitarian law and human rights by the various parties to the conflict. It emphasizes the obligation of all parties to the conflict to abide by their commitments under international law and to make all efforts to comply with all human rights recommendations that have already been made by various United Nations bodies, as well as to work within the framework of the Abuja peace agreement and other appropriate forums, to comprehensively address the perilous human rights situation in Darfur.

23. The group of experts emphasizes the essential work being carried out by UNMIS human rights monitors and other actors in the field and reiterates that the Government must provide human rights monitors with full and unhindered access to all regions of Darfur, including all places where persons are deprived of their liberty, as well as to investigation records, and that monitors must be allowed to interview victims and persons deprived of their liberty in private.

24. The group of experts expresses its hope of receiving information relevant to the preparation of its next report from the Government of the Sudan, the appropriate human rights mechanisms of the African Union and the Chairman of the Darfur-Darfur Dialogue and Consultation, UNMIS, other United Nations agencies, programmes and human rights mechanisms, as well as other actors involved in human rights and humanitarian work in Darfur.

25. The group of experts recommends that the Human Rights Council:

- (a) Urge the Government of the Sudan to continue and intensify its efforts to implement, without delay, the recommendations compiled by the group of experts in accordance with the specified time frames and indicators (A/HCR/5/6);
- (b) Call upon the Government of the Sudan to address impunity and ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are promptly brought to justice;
- (c) Reiterate its call to all parties to the conflict to put an end to all acts of violence against civilians, with special focus on women, children, the elderly, persons with disabilities, and internally displaced persons, as well as humanitarian workers;
- (d) Invite relevant United Nations bodies and agencies, including the Office of the High Commissioner for Human Rights, to provide the Sudan with support and technical assistance, in accordance with assessed needs, for the implementation of these recommendations;
- (e) Call upon donors to provide, on the basis of needs assessment, funds for this support and technical assistance.

3. Final Report on the situation of human rights in Darfur prepared by the United Nations Experts Group on Darfur, A/HRC/6/19

**Conclusions and recommendations** (A/HRC/6/19, paras. 54-62)

54. The group of experts concludes that the process of review has been facilitated by the very good cooperation of the Government of the Sudan; the Government's endeavours to address the recommendations made by the group; the timely reporting back to the group; and the open and constructive dialogue with the high-level inter-ministerial delegation of the Government from Khartoum and representatives from its Permanent Mission to the United Nations in Geneva. Thus, in procedural terms, the process of cooperative engagement with the Government of the Sudan has worked increasingly well.

55. As regards activities undertaken by the Government to implement recommendations, the group of experts notes that, in some areas, necessary steps were carried out fully or to a substantial degree, while in other areas, initial steps towards implementation had been taken. The group notes, in particular, efforts made to prepare laws and instructions that, if fully implemented, could be instrumental in improving the human rights situation in Darfur. With regard to other recommendations made by the group of experts, particularly those that the Government did not commit itself to implement, no actions of any significance were reported.

56. With regard to the impact of Government activities on the ground, the group of experts notes the Government's assertion that clear progress has been made in Darfur as attested, in particular, by the return of 359,000 internally displaced persons to their places of origin, a fall in reported cases of violence against civilians including women, and the massive presence of humanitarian workers in Darfur. It also notes that, according to United Nations figures, more than 248,000 persons had joined the ranks of the more than 2 million internally displaced persons since the beginning of 2007. With few exceptions, UNMIS, United Nations agencies, bodies and programmes with operational competence in Darfur and other relevant sources, with some exceptions, did not report any tangible impact of activities undertaken by the Government on the ground. Taking into account the reliability of the extensive information received from these organizations, based on their first-hand observation, verification, and wherever appropriate, inter-agency corroboration, the group of experts concludes that the information available does not confirm the Government's positive assessment of the impact on the ground of its activities aimed at implementing recommendations.

57. In particular, the group of experts assesses the status of implementation of the recommendations contained in its first report (A/HRC/5/6, annex) as follows (see annex I):

- Full implementation (i.e., all recommended activities have been carried out and, as a result, the situation on the ground has been reported to have improved accordingly): recommendations 2.1.3, 1.2.6
- Significant activities have been undertaken and a tangible impact has been reported: recommendations 2.1.1, 4.6
- Activities have been undertaken, but little or no tangible impact has been reported: recommendations 1.1.1, 1.1.4, 1.1.5, 1.2.1, 1.2.2, 1.2.4, 1.2.5, 1.3.1, 1.3.2, 1.4.3, 2.1.2, 2.1.4, 2.2.1
- Initial steps towards implementation have been undertaken: recommendations 1.2.3, 1.2.7, 1.2.8, 1.2.9, 1.3.3, 1.4.1, 1.4.2, 1.4.4, 1.5.1, 1.6.2, 2.2.2, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.3, 4.7
- There has been no implementation at all: recommendations 1.1.2, 1.1.3, 1.2.9, 1.4.5, 1.6.1, 2.2.3, 3.3, 4.4, 4.5, 4.8

58. The group of experts, while acknowledging the activities undertaken by the Government of the Sudan, is concerned that reports received clearly indicate that, with very few exceptions, these efforts have not yet led to an improvement of the situation of human rights in Darfur.

59. Several recommendations that were prioritized as short-term and could have been implemented within three months, given that they did not require lengthy administrative processes or additional resources, have not yet been implemented. The group of experts acknowledges that implementation of certain recommendations, although short-term, may be

complex and require more time for full execution, especially where recommended activities have been undertaken only recently. Continued review of the results on the ground would therefore be needed even if the recommended actions have been undertaken. With regard to the group's midterm recommendations, it should be noted that the 12-month period for their implementation, as set out in the group's first report, will end only in June 2008. The group notes that, in certain specific instances, the feasibility of full implementation has been affected by the absence of sufficient resources and technical assistance. However, the group reiterates that lack of resources cannot justify any acts of violence against the civilian population or the lack of action to prevent such acts. The group of experts recalls the Council's consensus on the seriousness of the ongoing violations of human rights and international humanitarian law and the urgent need to focus on the implementation of existing recommendations to enhance the human rights situation in Darfur, and urges the Government to implement fully the prioritized recommendations without further delay.

60. The group believes that the overall environment in Darfur for implementing recommendations remains critical. Many factors affecting these conditions, although outside the group's mandate, need to be addressed urgently in order to create an environment that fosters and sustains implementation on the ground.

61. The group recommends that the Human Rights Council continue the process of review in accordance with the time frames and indicators for assessing implementation developed by the group. While emphasizing that, as indicated clearly in resolution 4/8, the group of experts was established to ensure the effective follow-up and implementation of existing resolutions and recommendations on Darfur, and stressing the complementary nature of its mandate and that of the wider mandate of the Special Rapporteur on the Sudan, which covers all of the Sudan, the group indicates its readiness to continue the review process, unless this task is entrusted to the Special Rapporteur on the Sudan. The group suggests that a renewed mandate should envisage the possibility of an assessment mission to the Sudan, including its Darfur region, and sufficient time for an analysis of the implementation of medium-term recommendations, which expire on 20 June 2008.

62. The group of experts reiterates its previous recommendations to the Human Rights Council:

(a) To urge the Government of the Sudan to continue and intensify, to the extent that recommendations have not yet been fully implemented, its efforts to implement, without delay, the recommendations compiled by the experts group in accordance with the specified time frames and indicators (A/HRC/5/6, annex I);

(b) To call upon the Government of the Sudan to address impunity and ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are promptly brought to justice;

(c) To reiterate its call upon the Government of the Sudan and all other parties to the conflict to put an end to all acts of violence against civilians, with special focus on women, children, the elderly, persons with disabilities and internally displaced persons, as well as human rights defenders and humanitarian workers;

(d) To invite relevant United Nations bodies and agencies, including the Office of the United Nations High Commissioner for Human Rights, to provide the Sudan with support and technical assistance, in accordance with assessed needs, for the implementation of these recommendations;

(e) To call upon donors to provide, on the basis of needs assessment, funds for this support and technical assistance.

## United States of America

### Introduction

During the period under review, the Special Rapporteur on human rights while countering terrorism visited the United States from 16 to 25 May 2007 (please refer to document A/HRC/6/17/Add.3).

### Conclusions (A/HRC/6/17/Add.3, para. 53)

53. The Special Rapporteur has identified elements of best practice in the United States' fight against terrorism and the compliance of this with human rights and fundamental freedoms, including compensation for victims of terrorism, community outreach, and non-interference with the freedom of the press. He has, in contrast, also identified serious situations of incompatibility between international human rights obligations and the counter-terrorism law and practice of the United States. Such situations include the prohibition against torture, or cruel, inhuman or degrading treatment; the right to life; and the right to a fair trial. He has also identified deficiencies in United States law and practice pertaining to the principle of non-refoulement; the rendition of persons to places of secret detention; the definition of terrorism; non-discrimination; checks in the application of immigration laws; and the obtaining of private records of persons and the unlawful surveillance of persons, including a lack of sufficient balances in that context.

### Recommendations (A/HRC/6/17/Add.3, paras. 54-68)

54. The Special Rapporteur has described his visit to the United States as a step in the process of restoring the role of the United States as a positive example for respecting human rights, including in the context of the fight against terrorism, and he hopes that these steps continue to progress. He likewise recommends that the United States take a strong role in the implementation of the United Nations Global Counter-Terrorism Strategy.

55. The Special Rapporteur recommends that the categorization of persons as "unlawful enemy combatants" be abandoned. He calls upon the United States to release or to put on trial those persons detained under that categorization. In the case of those suspected of war crimes, the international community has recognized the need to ensure that there is no impunity for such offending, but the Special Rapporteur is gravely concerned about the increasing risks of an unfair trial as time continues to pass, and he therefore urges a determined effort to proceed with and conclude such prosecutions.

56. The Special Rapporteur further recommends that legislative amendments be made to remove the denial of habeas corpus rights under the Military Commissions Act 2006 and the restrictions upon the ability of Guantánamo Bay detainees to seek full judicial review of their combatant status, with the authority of the reviewing court to order release.

57. Notwithstanding the primary responsibility of the United States to resettle any individuals among those detained in Guantánamo Bay who are in need of international protection, the Special Rapporteur recommends that other States be willing to receive persons currently detained at Guantánamo Bay. The United States and the United Nations High Commissioner for Refugees should work together to establish a joint process by which detainees can be resettled in accordance with international law, including refugee law and the principle of non-refoulement.

58. In particular, the Special Rapporteur urges the United States to invite the United Nations High Commissioner for Refugees to conduct confidential individual interviews with the

detainees, in order to determine their qualification as refugees and to recommend their resettlement to other countries. He also urges the United States not to require from receiving countries the detention or monitoring of those returned in cases where such measures would not have basis in international and domestic law, and equally urges receiving States not to accept such conditions.

59. Due to the various concerns identified in this report pertaining to the composition and operation of military tribunals under the Military Commissions Act of 2006, involving multiple incompatibilities with the ICCPR, the Special Rapporteur recommends that these commissions be disestablished. Wherever possible, ordinary civilian courts should be used to try terrorist suspects.

60. In the case of persons charged with war crimes, being those crimes identified in the Rome Statute of the International Criminal Court, such persons may be tried by military courts martial provided that safeguards are in place to check against the exercise of bias or executive interference, including rights of appeal to civilian courts. In any such proceedings, the security classification of information should not interfere with the presumption of innocence or the equality of arms, nor should evidence obtained by any form of torture or cruel, inhuman or degrading treatment be admitted in proceedings. The United States should take steps to ensure that any person acquitted of charges is released upon acquittal, or in the case of a person convicted of an offence, that release occurs upon completion of the sentence imposed. The Special Rapporteur further recommends that the imposition of the death penalty be excluded for military tribunals or courts martial.

61. Gravely concerned at the enhanced interrogation techniques reportedly used by the CIA, the Special Rapporteur urges the United States to ensure that all its officials and agencies comply with international standards, including article 7 of ICCPR, the Convention against Torture and, in the context of an armed conflict, common article 3 of the Geneva Conventions. Noting the United States understanding of cruel, inhuman or degrading punishment, he reminds the Government that there are no circumstances in which cruel, inhuman or degrading treatment may be justified, and recommends that steps be taken to reflect this in its domestic law.

62. The Special Rapporteur has concluded that the interrogation techniques identified in this report, which are not explicitly prohibited in the United States Army Field Manual, involve conduct that may amount to a breach of the prohibition against torture and any form of cruel, inhuman or degrading treatment. He recommends that the Manual be revised to expressly state that only enumerated techniques are permissible. As a practice which is not permissible in international law, and one that creates the real risk of torture or other ill-treatment of persons, the Special Rapporteur urges the Government to take transparent steps to ensure that the CIA practice of “extraordinary rendition” is completely discontinued and is not conducted in the future, and that CIA interrogation techniques are regulated in line with the position expressed above in respect of the Army Field Manual.

63. The Special Rapporteur also calls on the United States to ensure that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red Cross, where applicable, family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release.

64. The Special Rapporteur urges the Government to restrict definitions of “international terrorism”, “domestic terrorism” and “material support to terrorist organizations” in a way that is precise and restricted to the type of conduct identified by the Security Council as conduct to be suppressed in the fight against terrorism. He strongly urges the United States to



ensure that it does not participate in the extrajudicial execution of any person, including terrorist suspects.

65. The Special Rapporteur recommends that all States, including the United States, do not use the country of origin of a person as a proxy for racial or religious profiling. He further urges all States not to act in a manner which might be seen as advocating the use of race and religion for the identification of persons as terrorists.

66. In the context of the compulsory detention of persons suspected of providing material support to terrorist organizations, the Special Rapporteur recommends that a transparent system be established for the application of the “duress waiver” established by the Department of Homeland Security, including the provision of judicial oversight.

67. Due to the fact that the United States Attorney General’s guidelines on the availability of surveillance warrants under FISA, and the minimization procedures applicable to the surveillance of US persons are classified, the Special Rapporteur recommends that the Government introduce independent mechanisms, preferably involving the judiciary, to ensure that these guidelines and procedures are compliant with both the Constitution and the international obligations of the United States. The Special Rapporteur further urges the Government to extend these, and existing safeguards, to all persons within the jurisdiction and control of the United States, not simply those falling within the definition of “US persons”.

68. The Special Rapporteur urges the Government to take steps to introduce independent checks and balances upon the authority of the FBI and other intelligence agencies to use National Security Letters.

## ANNEX

### ANNUAL AND THEMATIC REPORTS

2007

#### **Conclusions and recommendations of the Special Rapporteur on the right to food as a component to the right of adequate housing,**

A/HRC/4/18

32. In pursuance of the constructive manner in which the Special Rapporteur has attempted to carry out his mandate, this report provides standards and tools that could be utilized and further developed by States and other parties to promote the defence and realization of the human right to adequate housing. In this context, he would like to make the following recommendations to the Human Rights Council, which should be read alongside the recommendations contained in his last two reports to the Commission on Human Rights.

33. In particular, the Special Rapporteur requests the Council to:

- (a) Urge Governments to test and adapt the indicators presented on adequate housing (annex II), to establish national benchmarks consistent with their human rights obligation, and to participate actively in piloting and validation of these indicators with OHCHR;
- (b) Revisit the recommendations contained in document E/CN.4/2006/118, with a view to institutionalizing women's human rights to housing, land, property and inheritance within the work of the Council and relevant special procedures;
- (c) Ensure wide dissemination of the Basic principles and guidelines on development-based evictions and displacement (annex I) and inclusion of the issue of development and market-induced evictions in the elaboration of mandates of relevant special procedures of the Council, in particular on the rights of indigenous peoples, food, violence against women and adequate housing;
- (d) Urge States to incorporate these guidelines into national laws and policies governing housing and land issues, including resettlement policies;
- (e) Recognize the right to land as a human right and strengthen its protection in international human rights law. Given the magnitude of homelessness and landlessness across the world such recognition would promote the right to adequate housing, including protection against forced evictions;
- (f) Urge States to give priority to agrarian reform, and to land and wealth redistribution. Legislation should be enacted and implemented to check forced evictions and segregation, growth of the land mafia and cartels, and uncontrolled property speculation;
- (g) Consider holding an expert seminar to develop strategies for the legal recognition of land as a human right, including the protection of 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;
- (h) Consider, in its review of the mandate on adequate housing, to make more explicit, consistent with the work of United Nations treaty bodies and the Special Rapporteur, the recognition of adequate housing as a distinct human right

## **Conclusions and recommendations of the Working Group on Arbitrary Detention**

A/HRC/4/40

### **Conclusions**

73. The Working Group welcomes the cooperation it has received from States in the fulfilment of its mandate. In the great majority of cases in which the Group adopted an Opinion during its three sessions in 2006, the Government concerned had provided submissions regarding the case.

74. The Working Group welcomes the cooperation on the part of Governments that extended invitations to the Group for visits. Thanks to this cooperation, in 2006 the Working Group was able to visit Ecuador, Honduras, Nicaragua and Turkey. During its forty-seventh session, the Working Group made a revision of the list of countries it had requested to visit on official mission. It decided to persist in its requests to receive invitations to visit Afghanistan, Angola, Ethiopia, Guinea-Bissau, India, Italy, the Libyan Arab Jamahiriya, Turkmenistan and the United States of America, and to receive specific timing proposals for its visits to Colombia, Equatorial Guinea and Sierra Leone.

75. In a new Legal Opinion, the Working Group concludes that the transfer of detainees without procedural safeguards is in conflict with international law. Governments should stop all forms of rendition and return to the legal proceedings of extradition, deportation and expulsion. The practice of diplomatic assurances is acceptable only if the very stringent conditions mentioned in the Legal Opinion are met. On the contrary, the practice of “reverse diplomatic assurances”, as described in the current report, constitutes a serious violation of international human rights law.

76. The Working Group calls upon all States to join political and technical efforts in order to ensure and guarantee the basic needs and rights of people in detention. The Group considers that the minimum conditions are the following: the protection of the security, health and nutritional needs of the detainees and of their rights to have access to an adequate legal defence and to a fair trial.

### **Recommendations**

Growth in prison populations, particularly in developed countries

77. Having been made aware of an increase in the number of people being detained around the world, particularly in developed countries, the majority of the detainees being in pretrial detention, the Working Group recommends that this recent growth in prison populations should be studied and debated with a view to developing measures favouring respect of the rights of the detainees.

Detention on remand

78. Regarding detention on remand, the Working Group addresses to States the following recommendations:

- (a) Time spent in pretrial detention should be credited towards the sentence to be served;
- (b) Detainees acquitted in first instance should be immediately released;
- (c) Domestic legislations should establish the maximum duration of pretrial detention, which should not exceed the sanction established for the offence attributed to the accused;

(d) Effective remedies to ensure compliance with limits on the duration of remand detention should be put in place.

#### Alternatives to deprivation of liberty

79. States should review their legislation in order to establish or enlarge the scope of alternatives to deprivation of liberty as a sanction for criminal offences.

#### International transfer of detainees

80. With regard to the international transfer of detainees, particularly in the context of countering terrorism, the Working Group recommends:

(a) Governments removing persons in their custody from their territory and into the custody of another Government should do so within proceedings that offer adequate safeguards, in particular to argue before an independent body offering judicial guarantees that removal would expose those persons to extrajudicial killing, torture or other cruel, inhuman or degrading treatment, or arbitrary detention and denial of a fair trial;

(b) Governments should not engage in so-called “renditions”, which undermine such guarantees and are very likely to result in arbitrary detention;

(c) Governments should refuse to give assurances that they will deprive of their freedom persons transferred to their territory, unless such assurances can be given in accordance with both the domestic legislation and the Government’s international human rights obligations.

## **Conclusions and recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography**

A/HRC/4/31

### **Conclusions**

78. The Special Rapporteur would like to warmly thank all those who responded to the questionnaire. Although only relevant selections of the experiences and initiatives on which information was received are outlined in this report, the Special Rapporteur has found some very positive examples of preventive measures, institutions and programmes addressing both issues that deserve to be highlighted.

79. The issue of sale of organs and tissues, particularly of children's organs, remains for the moment mostly unsubstantiated. Although formal reports of organ and tissue trafficking are few, the disparity of costs, technologies and legislation related to this issue make it indispensable for the authorities to remain vigilant in order to avoid human organs and tissues becoming a trade commodity in which profit for some and desperation of other may lead to irremediable situations. Although there are reports of trafficking in organs and tissues involving violence against persons and children, diverse unconfirmed rumours persist. There is therefore a need to report and investigate when these allegations appear. The Special Rapporteur urges Governments to investigate thoroughly and ensure criminal sanctions against the traffickers and all those involved as child abusers.

80. The Special Rapporteur would also like, as a preventive measure, to remind Governments of the different safeguards put in place by different international and regional mechanisms, such as the Guiding Principles developed by the World Health Organization, the Conventions adopted by the Council of Europe and some examples of national legislation cited above. The Special Rapporteur takes this opportunity to invite all countries to establish legislation and standards so as to clearly regulate transplantation of organs and tissues. They should develop institutions to document and monitor all transplants taking place and to avoid the development of "transplant tourism", in which medical establishments open, taking advantage of disparities between the situation of the donor and the receiver, with significant risks for both persons involved in the transplant.

81. The Special Rapporteur also considers the phenomenon of child abduction to be of particular concern, as these disappearances and abductions often constitute the first step in abuses against children that can lead to sexual exploitation of the victims. The number of States having set up organized and effective systems to respond to children abductions is very limited, which results that when such a situation occurs, the first hours and days which are key for finding a missing child are being lost. Therefore, a coordinated, comprehensive, and global approach is required, where the different State institutions as well as NGOs and private business have a role to play. Among this, outreach on prevention and on fast and effective responses is essential. Rapid response programmes and initiatives taken by international and regional organizations such as the ones given as examples above are to be encouraged. States that have already elaborated legislative and administrative measures and programmes to tackle this issue are commended for their efforts and their successes in finding abducted children. These rapid response programmes are not only tools to respond to abducted and missing children, but also allow considerable improvement between the different organizations for prevention of violence against children.

## **Recommendations**

82. While noting that most States which responded to the questionnaire have adopted legislative measures to combat trafficking and sale of children organs, the Special Rapporteur recommends that States adopting or amending their legislation in this regard bear in mind the considerations set out below.

83. In line with the standards set by the Guiding Principles on human organ transplantation of the World Health Organization as well as with the Global Programme against Trafficking in Human Beings launched by the United Nations Office on Drug and Crime and the European Conventions on Action against Trafficking in Human Beings and Human Rights and Biomedicine, the Special Rapporteur invites States to incorporate into their national legislation prohibitions against any sale and trafficking of children's organs and tissues and effective safeguards to ensure implementation and to further develop bilateral and regional strategies to be able to document any cases should these happen and bring perpetrators to justice.

84. States should, in particular:

- (a) Consider adopting legislation and standards regulating organ and tissue transplantation in line with the Guiding Principles developed by the World Health Organization and the World Medical Association;
- (b) Enforce bilateral and regional cooperation through the elaboration of common standards, taking as an example the conventions and recommendations adopted by the Council of Europe, and adapt domestic laws and standards in line with these common principles;
- (c) Establish an effective information network that investigates, documents and monitors allegations of traffic of organs and tissues, and ensure bilateral, regional and international cooperation between the law-enforcement agencies in charge of the fight against this traffic;
- (d) Establish a centralized transplant agency in charge of coordinating receivers' needs and donors' situation, establishing transparent and equitable waiting lists for each category of organs, regions and all age groups;
- (e) Clearly prohibit the sale of one's organs and tissues so as to eradicate demand for this traffic as well as to penalize heavily those who do so;
- (f) Ensure that all children under the age of 18 are protected from becoming donors of organ and tissue transplantation, except in cases where an immediate family member is at a life-threatening risk, that no suitable donor has been found, that the donor's consent has been given, that this transplant will not cause a threat, immediate or future, to the donor and that this transplant will bring substantial health improvement to the receiver;
- (g) Ensure that criminal proceedings against sellers, intermediaries and traffickers are initiated promptly and can be initiated ex officio.

85. Regarding the question of abduction of children and the need to address this issue in a coordinated, comprehensive and global approach, in line with the examples of rapid-response programmes discussed earlier, the Special Rapporteur recommends all States to set up rapid-response programmes and specifically:

- (a) To incorporate in their national legislation provisions criminalizing abduction, and providing stricter penalties or aggravated circumstances in cases where victims are children;
- (b) To establish, taking into account each State's capacity, resources and constraints, a central institution consisting of operational centres, based on a public-private partnership model and established with the support of the national Government which should include the following minimum: a call centre and Internet website that are easily accessible, a photo distribution system and linkages with law enforcement by offering training, model policies and procedures and technical support as well as a voluntary partnership between law-enforcement agencies and broadcasters to activate an urgent bulletin in the most serious child-abduction cases so as to instantly galvanize the entire local community;

- (c) To cooperate bilaterally and regionally in establishing common standards and allowing unrestricted exchange of information between the different law-enforcement agencies of countries involved when addressing the search of a missing or abducted child;
- (d) To clearly define the policies and scope of intervention so that when a case of an abducted or missing child is reported, the system is immediately activated and not left at the discretion of individual actors or other situations that may delay an immediate response;
- (e) To involve NGOs and private actors in the rapid-response programmes, especially media and communication businesses and organizations that will be able to relay the alert message quickly and effectively;
- (f) To establish assistance and rehabilitation facilities specifically designed for victims of violent abductions and their families in order to help them reintegrate into their community.

86. The Special Rapporteur stresses finally that educational programmes as well as awareness-raising activities are essential in the fight against traffic of organs as well as in addressing the issue of abduction of children. He calls upon States:

- (a) To develop awareness-raising campaigns among health and law-enforcement officials on the issue of traffic of organs, gratuity and consent of the donor;
- (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 abducted;
- (c) To ensure that the school curriculum includes child rights education that addresses the issue of abduction of children by strangers, but also by estranged parent or family members 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 abductions and should be made available at all school levels;
- (d) To develop assistance programmes for the reintegration of victims, emphasizing on physical, psychological aspects as well as legal assistance.

## **Conclusions and recommendations of the Working Group on Enforced or Involuntary Disappearances**

A/HRC/4/41

495. In 2006, the Working Group transmitted 248 newly reported cases of disappearance to 16 Governments, 79 of which allegedly occurred during 2006. The Working Group used the urgent action procedure for 87 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 152 cases of disappearance. The Working Group discontinued 18 cases. The Working Group is grateful for the cooperation received from a number of Governments. Nevertheless, it remains concerned that, of the 79 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 requests for information or its reminders. 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 and the Commission on Human Rights. The cooperation of Governments is indispensable to discovering the fate or whereabouts of disappeared persons around the globe.

496. The Working Group is concerned about underreporting of disappearances in certain regions and countries. This is due, among other reasons, to government restrictions on civil society work on this sensitive issue. The Working Group is concerned that in a number of States, legal restrictions are placed upon NGOs working on cases of disappearance. NGO workers and witnesses to disappearances are also subject to threats and harassment. The Working Group strongly urges States to allow NGOs to undertake their work freely and without impediment, to allow families of victims of disappearances to organize freely without bureaucratic restriction or legislative obstacles and to protect witnesses.

497. The Working Group calls upon Governments to comply with their obligations under articles 7, 8 and 9 of the Declaration: no circumstances whatsoever may be invoked to justify enforced disappearances; no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance; and the right of all persons deprived of their liberty to a prompt and effective judicial remedy.

498. The Working Group calls upon Governments to comply with their obligations under article 10 of the Declaration. 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.

499. The Working Group also calls upon Governments to comply with their obligations under article 16, paragraph 2, of the Declaration, which states that perpetrators shall be tried only by the competent civilian courts in each State and not by any special tribunals, in particular military courts.

500. The Working Group reminds Governments that in combating disappearances effective preventive measures are crucial. Among them, the Working Group highlights the following: harmonization of domestic law with the obligations of States under the Declaration and other international human rights law; accessible and updated registries of detainees; guaranteed access to appropriate information and to places of detention for



relatives and lawyers of persons deprived of their liberty; ensuring that persons are brought before a judicial authority promptly following detention; bringing to justice all persons accused of having committed acts of enforced disappearance, ensuring that perpetrators do not benefit from any special amnesty law or other similar measures likely to provide exemption from criminal proceedings or sanctions; and providing redress and adequate compensation to victims and their families.

501. 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.

502. The preventive measures noted above are particularly aimed at democratizing the structures of governance and making human rights the cornerstone of public policy. When Governments take steps to create and support specific bodies and institutions charged with addressing disappearances, experience has demonstrated that they have highly positive results. For instance, the establishment of investigating bodies, truth commissions and war crimes tribunals are concrete actions that may lead to the clarification of cases and to the implementation of compensation policies for victims. These are strongly encouraged and supported by the Working Group, subject to the following paragraph.

503. A further goal of public policy must be the eradication of the culture of impunity for the perpetrators of disappearances that is found to exist in many States. The Working Group therefore wishes to stress again the importance of ending impunity for the perpetrators of enforced disappearances. This must be understood as a crucial step, not only in the pursuit of justice but also in effective prevention. The Working Group encourages the Office of the 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 disappearance.

504. The Working Group recommends that the international community and international NGOs support the development and strengthening of regional and national civil society institutions that could deter serious human rights violations, such as in sub-Saharan Africa and other parts of the world.

## **Conclusions and recommendations of the Special Rapporteur on the right to education**

### *The right to education of persons with disabilities*

A/HRC/4/29

81. The existing human rights legal and programmatic frameworks clearly recognize inclusive education as an indispensable element of the right to education for persons with disability. Inclusive education, in short, seeks to avoid the exclusion of all learners, including learners with disabilities, from education. By definition, the exclusion of learners from education - particularly primary and secondary - indicates a breach of the right to education.

82. At the same time, implementing inclusive education also raises challenges in practice. The provision of adequate and sustainable resources, ensuring an accessible and accommodating learning environment, changing traditional or discriminatory attitudes towards persons with disabilities, helping teachers, school administrators, families and communities understand and participate in decisions and processes related to inclusive education and, most significantly, ensuring that the special education needs of learners with disabilities are met within the general education system are all important challenges to inclusive education. When these challenges are put in the context of the existing strains on schools and communities, they should not be underestimated.

83. Nonetheless, while such challenges exist, the alternative of excluding large sections of the community from enjoying their right to education and the related consequences - inequality, exclusion of persons with disabilities from participating in society including through employment, the entrenchment of barriers and discriminatory attitudes and practices, the maintenance of costly segregation in education and so on - provides the impetus to seek solutions to such challenges. Importantly, much can be done to work towards inclusive education either at little additional costs or through the more efficient and effective use of existing resources.

84. The Special Rapporteur recommends that States take the following steps towards ensuring an effective inclusive education system:

(a) Eliminate legislative or constitutional barriers to children and adults alike with disabilities, being included in the regular education system. In this regard States should:

- Ensure a constitutional guarantee of free and compulsory basic education to all children;
- Adopt and entrench legislation aimed at ensuring the rights of persons with disabilities;
- Ensure that legislation prohibiting discrimination in employment is adopted and enforced. This will enable persons with disabilities to become teachers;
- Ratify the Convention on the Rights of Persons with Disabilities;

(b) Ensure that one ministry is responsible for the education of both children and adults. States may therefore need to:

- Amend legislation so that the Ministry of Education is responsible for the provision of all education;

(c) Ensure that one school system is responsible for the education of all children in their region. To this end, States may need to:

- Amalgamate budgets and administration of special education and regular education within a geographical area;

- Adopt policy priorities and legislation that promotes inclusion of all students in the mainstream education system;
- (d) Transform existing special education resources - special schools or classes - into resources to assist the mainstream system. To do this States may need to:
- Train special educators to serve as additional resources to regular teachers;
  - Transfer students from special programmes to regular classes supported by the resource staff;
  - Allocate financial resources for the adequate accommodation of all students and for technical assistance to support ministry of education officials, at the district, school and classroom level;
  - Revise testing methods to ensure that accommodation is made for students with disabilities;
- (e) Provide pre-service and in-service training to teachers so that they can respond to diversity in the classroom. To this end, States may therefore need to:
- Train teachers in classroom techniques such as differentiated instruction and cooperative learning;
  - Encourage persons with disabilities to train as teachers;
  - Use pyramid training techniques where teachers, once trained in inclusive education methodologies, teach other teachers and so on;
- (f) Provide training to educational administrators and support staff on best practice in response to individual student needs. States may need to:
- Provide models of practice that provide support such as “school-based support teams”;
  - Provide regular access to new knowledge on school and classroom “best practices”;
- (e) Ensure that conditions that constrain teachers to teach inclusively are addressed. To do this, States may need to:
- Address class size. Smaller class sizes are generally considered to be most effective;
  - Revise and adapt curriculum content in accordance with best practice;
  - Ensure that school buildings and materials are accessible to children with disabilities;
  - Contribute to, cooperate with and disseminate ongoing international and domestic research into best practice as it relates to inclusive education;
- (f) Invest in inclusive early childhood care and education (ECCE) programmes, which can lay the foundation for lifelong inclusion of children with disabilities in both education and society. States may need to:
- Undertake a consultative process, including disabled people’s organizations and groups for parents of disabled children, to develop a national ECCE policy;
  - Include ECCE in key government resource documents such as national budgets, sector plans and poverty reduction strategy papers;
- (g) Provide training to parents of children with disabilities so that they know about their rights and what to do about it. Here States may need to:
- Support civil organizations, including those of parents of children with disabilities, to build capacity on the right to education and how to influence effective policy and practice;
- (h) Develop accountability mechanisms in order to monitor exclusion, school registration and completion of education by persons with disabilities. States should therefore, as a minimum:
- Adopt and revise reporting mechanisms to disaggregate data on school participation. Such data should specifically include type of disability;
- (i) Seek, and act upon, assistance as required. To this end, States may need to:

- Seek assistance on best practice from States and international and/or intergovernmental organizations;
- Integrate these best practices into legislative and policy frameworks;
- Where adequate resources are lacking, seek international assistance.

85. The Special Rapporteur also recommends:

- To the World Bank: compilation of best practice where the special education needs of persons with disabilities have been met through general education. Research into rights-based funding formulas to ensure effective, efficient and sustainable resource allocations for the right to education of persons with disabilities;
- To the Office of the United Nations High Commissioner for Human Rights: to continue assisting human rights mechanisms to review and research specific challenges to the rights of persons with disabilities, as the right to education will not be realized if their other rights are neglected;
- To national human rights institutions and civil society: to participate actively in the design of inclusive education and to help monitor implementation and raise awareness;
- To the Human Rights Council: to request information on challenges faced by States in their prompt ratification of the Convention on the Rights of Persons with Disabilities and to request all human rights mechanisms to include in their work attention to the situation of persons with disabilities.

## **Conclusions and recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions**

A/HRC/4/20

63. The prohibition of the execution of those who were under 18 at the time of committing a crime is of fundamental importance to international human rights law. The Islamic Republic of Iran is the only country in the world in relation to which I continue to receive significant numbers of credible reports of such sentences being imposed and, in some cases, carried out on juveniles. Iran is a party to two treaties which explicitly outlaw this practice. My repeated requests over several years to visit Iran in order to ascertain the accuracy of these reports and to explore through dialogue ways in which to remedy any shortcomings have yielded no response. This is despite the fact that a “standing invitation” has been issued. This is now a matter in relation to which the Council will need to respond appropriately.

64. International human rights law and international humanitarian law are complementary bodies of law. Suggestions that the extrajudicial executions mandate and, much more importantly, the Human Rights Council as a whole are excluded from inquiring into possible violations of human rights or humanitarian law committed in any context in which an armed conflict may or may not be occurring would dramatically reduce the relevance of the Council and would eliminate all public scrutiny under international law for such violations. The Council should uphold and continue its very long-established practice - dating back almost a quarter of a century in the case of this mandate alone - of scrutinizing alleged violations of both human rights and humanitarian law, even if committed in the context of an armed conflict.

65. The death penalty must, under international law, only be applied for the most serious crimes. This standard, like all others in international human rights law, cannot be interpreted subjectively by each individual country without making a mockery of the basic principle. Over the past two decades international jurisprudence from a wide range of sources has succeeded in bringing clarity to the question of which crimes can legitimately be classified as being the “most serious”. As a result, the death penalty can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life.

66. Making the death penalty mandatory for certain crimes, in such a way that a judge is prohibited from taking the circumstances of an individual accused person into account in sentencing, is illegal under international human rights law. This is not to say that countries which retain the death penalty are unable to apply that penalty in the majority of cases involving a most serious crime, but they are obligated to at least provide for the possibility that a judge might find a death sentence impermissible in a particular individual's case because of extenuating circumstances of one kind or another.

## **Conclusion and recommendations of the Special Rapporteur on the right to food**

A/HRC/4/30

68. The eradication of hunger and violations of the human right to food is the most urgent priority facing Governments today. In a world that is richer than ever before, it is unacceptable to allow children, women and men to suffer from hunger and famine. Hunger and people's lack of access to sufficient productive resources to be able to feed themselves will continue to create conflicts and force children out of school into forced labour, including recruitment into armed forces. Hunger will also continue to force people to flee their own countries. The answer is not a criminalization of those who suffer from hunger. The answer is to take immediate action to respect, protect and fulfil the right to food of every human being.

69. The Special Rapporteur makes the following recommendations:

(a) Governments should follow the recent examples of Brazil, Guatemala, India, South Africa, Venezuela and Bolivia in the implementation of the right to food at the national level. The Special Rapporteur encourages Governments to adopt an adequate legal framework to ensure the right to food for all, including and in particular for the most vulnerable. This should include a clear definition of the right to food and the obligations of the Government to respect, protect and fulfil the right to food, without discrimination, as well as provisions for strong, independent and adequately financed monitoring mechanisms;

(b) All Governments should take immediate steps to eliminate child hunger. This should include programmes to address food security and adequate livelihoods, as well as nutritional security, especially in vitamin A, iron and iodine deficiencies and the promotion of breastfeeding. School meal programmes should be universalized and should ensure adequate nutrition for all children. Special programmes must be conceived for the 140 million children under 12 who still have no access to school;

(c) Governments and international agencies must guarantee safe passage in accordance with international humanitarian law and must ensure that relief assistance meets the specific food and nutrition needs of families and their children during emergency situations such as conflicts and natural disasters;

(d) All governmental and non-governmental armed forces must stop recruiting children as combatants or with other functions and release those who remain at their service, and measures must be taken to avoid the enlistment of child combatants who are forced into recruitment by hunger;

(e) All Governments and international agencies should address the root causes of migration and armed conflict, including realizing the right to food in those countries where people have little option but to flee their own countries or where children are forced to enlist in armed groups in order to procure food for themselves and their families;

(f) States should refrain from deporting people who have fled from their own countries as a result of hunger and violations of the right to food. States should institute legal protection for people forced to flee for reasons related to severe violations of economic and social rights into account, including violations of the right to food, either by revising existing international instruments on refugee protection, or through the adoption of new instruments;

(g) All Governments have a responsibility to respect the right to food. Article 11 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 12

of the Committee on Economic, Social and Cultural Rights create the extraterritorial obligation of all Member States to respect the right to food of all human beings, regardless of their citizenship. This responsibility must include the principle of non-refoulement for people whose lives will be at risk if they are deported. Governments should not expel, return or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of suffering from hunger, chronic undernutrition or violations of the right to food. Governments should recognize that refugees from hunger have the right to seek asylum and the right to temporary refuge during famine.

## **Conclusions and recommendations of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

A/HRC/4/27

### **Conclusions**

64. The oppression of the most active sources of expression and opinion - journalists, trade unionists, social workers, students and teachers, writers and artists - often follows an identical approach in different countries around the world. The range of violations includes killings, enforced disappearances, arbitrary arrest and detention, mistreatments, threats and harassment, unfair trial, and various types of judicial and administrative measures. Women and minority groups exercising their right to freedom of expression may undergo additional pressure from authorities. Patterns of violations of the right to freedom of opinion and expression seem to remain essentially unchanged, though the Special Rapporteur has noted a significant increase of violations against Internet users. The media community appears to be increasingly preoccupied about media professionals' safety and protection, worsened, in terms of casualties, due to the Iraqi conflict.

65. The Special Rapporteur is dismayed at the never-ending spiral of violence, including murderous attacks, against media professionals. More than ever, journalists and media workers are targeted by a multiplicity of aggressors who react to the exercise of the right to information in name of diverse, lawful and unlawful, interests. The attacks brought by armed groups, including national armies and law enforcement agencies, and economic corporations remain the most lethal for media professionals, who pay a high price for their efforts to offer exhaustive and multifaceted information to the public.

66. Governments and State institutions have the primary responsibility of ensuring the safety and security of citizens, including media professionals. The quest for international legal norms covering safety and protection of media professionals is a subject of great urgency which needs speedy replies from the international human rights community. Impunity of perpetrators, who often escape from any kind of legal procedure, has increasingly become a deterrent to the growing of independent and pluralist information. Lack of action, negligence or collusion with criminal entities is to be, at various extents, considered as a pattern of human rights violation.

67. As already noted in previous years, the current international situation has had a negative effect on freedom of expression and freedom of movement: several Governments have enforced preventive anti-terrorism legislation some of which may result in the reintroduction of practices that are prohibited under international human rights law. The Special Rapporteur observes that such legislation, especially when enforcing closing of media enterprises, censorship on publications and programmes, arrest and detention measures concerning media professionals, is naturally having a negative effect on freedom of expression. The same can be said for freedom of association: trade unions, student groups, social and cultural societies, intellectuals have been suffering from the implementation of laws that inevitably restrict the realm of freedom of expression.

68. Media play a vital role in a society by providing an arena for debate, exchange of opinions and ideas. In numerous countries, media activities are guaranteed by a body of norms and regulations defending freedom of expression, especially in debating controversial subjects of public interest. The existence of a code of ethics encourages media professionals to work efficiently through an array of voices and perspectives that help audiences to grasp the quintessence of events and situations.



69. The exercise of freedom of expression by media professionals demands good judgement, rationality and a sense of responsibility. Insulting religions, deep-rooted beliefs and ethnic identities through the use of stereotypes and labelling is not conducive to creating an enabling environment for a constructive and peaceful dialogue among different communities. Polarization based on distorted arguments can spread ethnic and religious hatred thus endangering delicate social and cultural balances, which are the results of relentless efforts to consolidate a harmonious multicultural society. Journalist associations should ensure that the debate among professionals on contentious issues, such as religious matters, can provide the category with insights and in-depth analyses.

70. There is no contradiction between the principles of freedom of religion and freedom of expression. They are mutually reinforcing and enhance the human and spiritual basis of societies and populations. The respect for religious feelings and the warrant for editorial freedom must find their own balance within a given social and cultural context.

71. Nonetheless, the free flow of information and opinions should be encouraged and particularly in a time of increasing global access to information, as it represents a remarkable source of inspiration and contact among different peoples and cultures. Non-violent expression of opinions, either orally, through the press or other media allowed should also be encouraged. The exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities and it may therefore be subject to few restrictions necessary to guarantee, inter alia, the respect of the rights of others. According to paragraph 3 of article 19 of the International Covenant on Civil and Political Rights, such restrictions should only be provided by law in order to define clearly the nature of the limitations to freedom of expression. Moreover, paragraph 3 precisely indicates to which cases these restrictions could apply: (a) for the respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Such restrictions should be applied only in cases of extreme danger for the democratic order and should have a well-defined time limit. With regard to the restriction mentioned in paragraph 3 (a), the respect of the rights and the reputation of others, including the right to privacy, should be exercised without silencing debates on valuable subjects and without insulting a person's feelings.

72. Legislation on new technologies appears to be a major preoccupation even in environments traditionally favourable to freedom of expression. Regrettably, new and old technologies are increasingly used as more or less sophisticated tools for political propaganda, which may include racial discrimination and hate speech, thus contributing to spreading the polarization of ideas and ethnic tension. Nonetheless, the universal availability of new tools for communication and information may give a great impetus to social advancement and to the dissemination of education and knowledge, thus widening the scope of the right to freedom of opinion and expression. New communication technologies have also opened a large debate on the limit between the right to access to information and the right to privacy.

73. Internet governance and human rights is one of the themes that would animate the debate of the international community in the near future. Internet governance should solidly be anchored to a human rights vision: guaranteeing freedom of opinion and expression on the Internet and other new communication tools is a strategic component of the struggle against poverty worldwide. Making new technologies available globally will contribute to reduce the social and economic gap between developed and developing countries.

74. Freedom of expression through the Internet cannot exclusively depend on mere commercial interests. Economic forces should be reliable partners of the civil society calling for human rights, fair justice, health care, environmental protection, which will increasingly be indispensable elements for the building of future societies. On the other hand, the

systematic tracking of users' action - a clear pattern of violation of the right to privacy - can bias their own ability in making choices independently, thus ultimately restricting their freedom of opinion.

75. There is a constant trend, which has the support of the Special Rapporteur, towards the decriminalization of defamation offences. The number of countries that have adopted new legislation moving this category of offence under civil law is on the increase. Unfortunately, criminal charges, sentencing to prison terms and the imposition of heavy fines for defamation, libel and slander are still common in many other countries.

### **Recommendations**

76. The Special Rapporteur urges Governments to assess existing national legislation and judicial practices related to all forms of freedom of opinion and expression and commence, whenever necessary, reform processes in order to guarantee conformity to international human rights norms and regulations. The Special Rapporteur also recommends Governments to consider, inter alia, the protection and the promotion of media independence as a priority, in order to ensure a constant advancement in the field of freedom of expression and information.

77. The Special Rapporteur invites the Human Rights Council to address, in an open debate, the recommendations included in the joint report submitted at its second session by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the question of defamation of religion and incitement to religious hatred (A/HRC/2/3). This report contains a comprehensive set of recommendations and conclusions for further action from the Council, with a view to promoting a balanced approach to the search for peaceful coexistence among peoples of different religions and cultures.

78. The Special Rapporteur urges existing independent media authorities and media associations to be vigilant about the use of forms of expression characterized by defamation of religions and discriminatory connotations of ethnic and other vulnerable groups. The indiscriminate use of labelling of women, minorities and other groups, especially migrants and asylum-seekers, endangers the public debate and fuels self-censorship and a sense of fear. These forms of expression also have a negative impact on the quality and the dignity of journalism, and ultimately jeopardize media integrity. In this connection, media associations should systematically organize human rights training, if necessary with the assistance of relevant United Nations bodies and other expert organizations, for their members in order to enhance professional ethics and human rights awareness. Media associations should also ensure that most sensitive societal issues are constantly debated in professional forums.

79. The Special Rapporteur vigorously emphasizes that any new intergovernmental body administering, partially or totally, Internet governance must be anchored in a human rights vision. The universality of the right to freedom of opinion and expression, as defined in article 19 of the Universal Declaration of Human Rights, and reiterated in other human rights instruments like the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms should guide Governments and the international community at large in this endeavour.

80. In the meantime, the Special Rapporteur recommends that all States guarantee freedom of opinion and expression on the Internet, inter alia, by extending to websites contributors and bloggers the same legal protection as media professionals. Transparency, openness and accountability should be promoted in order to enrich debates and dialogues. Internet providers and websites registration with national authorities should not be subject to any specific

requirement other than necessary legislative provisions protecting against child pornography. Moreover, States should make sure that Internet governance will promote the universal availability of new technologies and not be limited by economic and commercial considerations only, with the aim of spreading education and awareness especially in less developed areas.

81. The Special Rapporteur strongly recommends to Governments to decriminalize defamation and similar offences. These should be dealt with under 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.

82. 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, criticism of the nation, its symbols, the Government, its members and their action should be seen as an offence. Elected officials and authorities' officials should be conscious that, because of their role, they might attract the attention of the press in the implementation of their functions. On the other hand, Governments should 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.

83. In this context, the Special Rapporteur encourages Governments to consider the opportunity of establishing an independent authority on communications, whose members possess relevant expertise in related fields, and a media ombudsperson, which could respectively be entrusted with the implementation of relevant laws and regulations and with mediator's functions with regard to media offences without recurring to criminal law. These authorities will impartially evaluate the seriousness of violations and issue sentences that would not put at risk the core values of freedom of expression.

84. The joint action of an authority on communications and a media ombudsperson could ultimately ensure that, in addition to economic and political groups, various actors of civil society, local communities and minorities, and vulnerable groups can exercise their right to freedom of opinion and expression through unimpeded access to media. Such an authority should also be mandated to control the regularity of the competition of the economic stakeholders' action in the market of information. Consumers should be able to make choices without being subject to private or public monopoly, a phenomenon that gravely jeopardizes the pluralism of information, affects the independence of media and increases the cost of the access. In addition, monopolistic regimes make it easier to exercise control and censorship of citizens' opinions and, at the same time, can direct, often in a veiled manner, citizens' choice in various fields.

85. Media security remains one of the core elements to guarantee pluralist information in a period marked by polarization of opinion and widespread violence. 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 may also decide to cover the expenses for a flexible protection for endangered journalists. The identification and adequate punishment of the perpetrators of attacks against journalists will contribute to strengthening the rule of law and buttress the confidence of the ordinary citizen in State institutions. Media professionals should, under no circumstances, be obliged to bear the economic burden of their physical protection, in addition to the mental stress of being at risk. Governments should also

ensure the protection of other categories at risk, such as trade unionists, social workers, students and teachers, and artists.

86. The Special Rapporteur reiterates his call to the Human Rights Council to pay increased attention to the issue of the security and protection of journalists, in particular in situations of armed conflicts. The Council may wish to consider the opportunity, as previously discussed, of entrusting the 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. This study could represent the first step towards a debate, within the Human Rights Council, on this crucial issue.

## **Conclusions and recommendations of the Special Rapporteur on freedom of religion or belief**

A/HRC/4/21

48. The number and seriousness of mandate-related allegations received by the Special Rapporteur lead to the conclusion that the protection of freedom of religion or belief and the implementation of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief is far from being a reality. Governments should redouble their efforts to uphold the provisions in their everyday work and non-governmental organizations may continue to exercise their role as public watchdogs and also inform on national best practices. Numerous differing approaches in various countries may be noted and there still is a huge gap between rhetoric and practice in many instances.

49. The principles contained in the 1981 Declaration need to be further disseminated among lawmakers, judges and civil servants but also among non-State actors. It is of the utmost importance to promote the ideals of tolerance and understanding through education, for example by introducing human rights standards in school curricula and through the training of the teaching staff. Religious tolerance can only be acquired if people learn from their earliest childhood about the existence and distinctive characteristics of other religious or faith-based communities. There is an urgent need to eliminate the root causes of intolerance and discrimination and to remain vigilant with regard to freedom of religion or belief worldwide. It is equally crucial to depoliticize issues relating to religion or belief and to bring the discussion fully within the framework of human rights.

50. The Special Rapporteur would like to reiterate that most situations of religious intolerance stem either from ignorance or from misleading information. In her opinion, the right orientation to education is crucial for promoting religious harmony. Unfortunately, she regularly receives allegations about schoolbooks which display, and even encourage, a lack of respect for members of non-traditional religious minorities or for religions that differ from the predominant religion in the country. The authorities concerned are called to promptly remove any passages from schoolbooks that run counter to religious tolerance or to withdraw such books. In this regard, the 2001 Madrid Final Document on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-discrimination offers important guidance for a desirable education of tolerance.

51. The Special Rapporteur's envisaged online digest of the past 20 years of mandate experience might help in disseminating the international standards of freedom of religion or belief. In combining the categories of her framework for communications with pertinent excerpts from the Special Rapporteurs' reports, she hopes to make the applicable legal standards more easily accessible and understandable. On the preventive level, this may eventually lead to an improved knowledge of the required or prohibited governmental actions. With regard to the protection of victims, the online digest is intended to help in identifying the international human rights involved, thus facilitating the work of non-governmental organizations and their interactions with the Special Rapporteur.

52. As many women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities, national and international action is required to prevent such aggravated discrimination and to improve the protective efforts. Prevention requires first of all identifying cultural practices that are harmful for women and girls; States should then prepare strategies, e.g. through educative, legislative and health-related measures, in order to eliminate prejudicial practices especially where they are deeply rooted in society. Protection

necessitates effective application of existing national laws and international human rights standards; Governments should therefore reinforce domestic structures of control and official bodies for the protection of all human rights. The Special Rapporteur hopes that her predecessor's study entitled "Étude sur la liberté de religion ou de conviction et la condition de la femme au regard de la religion et des traditions" (E/CN.4/2002/73/Add.2) will be translated into the other official languages of the United Nations.

53. Some counter-terrorism measures appear to include elements that undermine respect for fundamental human rights, including freedom of religion or belief. While the Special Rapporteur is conscious of the fact that the States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, she emphasizes that States must also ensure that any measure complies with their obligations under international human rights, refugee and humanitarian law. She reiterates the concern expressed by other mandate-holders that the application of terrorism definitions may be used to outlaw peaceful religious entities or to blacklist entire communities and religions, subjecting them to systematic suspicion. States should refocus their efforts on the origins of terrorism and on the need to ensure protection and promotion of human rights without bias or selectivity.

54. Religious minorities and new religious movements are confronted with various forms of discrimination and intolerance, stemming both from Governments and from non-State actors. It is critical that Governments commit themselves to full respect to the norms of human rights and play a role of bridge-builders rather than join the alarmists in widening the gap of understanding and mutual trust. Rising religious intolerance deteriorates the quality of life for all people of the world. Concerning the concepts of "religion" or "belief", the Special Rapporteur interprets the scope of application for freedom of religion or belief in a large sense, bearing in mind that manifestations of this freedom may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Furthermore, no religious community should be empowered to decide about or to veto the registration of another religious or belief group.

55. Legislation with regard to advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence must be applied by independent and non-arbitrary bodies. Accordingly the prosecution, while retaining their prosecutorial discretion, should rely on transparent and neutral standards when applying the legislation to specific cases. Furthermore an independent judiciary is an absolutely vital component in the process of effectively combating forms of expression that incite to religious or racial hatred. The need for bodies which comply with international standards on the independence of the judges and lawyers in this context is a prime example of the importance of the interdependence of human rights. It should also be noted that the application of so-called "hate speech" legislation can be particularly problematic where the law itself favours one religion, or where a religion rather than freedom of religion or belief is the object of protection.

56. Religious controversies are historical. They will continue to demand the international community's attention and challenge societies to find creative ways of dealing with it. There are no classic or tested recipes for resolving such sensitive issues. Nevertheless, at the very least, political leadership must collectively and openly commit itself to defy intolerance based on religion or belief. In this regard, a continuing dialogue at all levels is essential. There are indeed some remarkable examples where a call for dialogue has prevented violence or ended hostilities. In many cases, such initiatives are even more successful when they include members of all faiths and beliefs, women as well as persons who are dispassionate in matters of religion.

49. The 21 years of mandate practice confirm the statement in Human Rights Council resolution 4/10 that “the disregard for and infringement of human rights and fundamental freedoms, in particular the right to freedom of thought, conscience, religion or belief, continue to bring, directly or indirectly, wars and great suffering to humankind”. Many further efforts need to be made at the international and national levels in order to eliminate intolerance and discrimination based on religion or belief. The right to freedom of religion or belief is a fundamental human right which is guaranteed by various international legal instruments, some of them are legally binding and others are so-called soft law. In her framework for communications (E/CN.4/2006/5, annex) the Special Rapporteur compiled the international human rights standards concerning freedom of religion or belief, including those referred to in Human Rights Council resolution 4/10. The Special Rapporteur also uses the framework’s structure of thematic categories in the present report in order to illustrate the pressing issues of concern for her mandate.

50. Particularly worrying are cases where the freedom to adopt, change or renounce a religion or belief has been infringed, for example when State agents try to convert, reconvert or prevent the conversion of persons. While the right to freedom to worship is not limited to members of registered religious communities, many believers belonging to religious minorities are not allowed to worship or conduct any religious activities without State approval or prior registration. Since believers are in a situation of special vulnerability whenever they find themselves in places of worship, States should pay increased attention to attacks on places of worship and ensure that all perpetrators of such attacks are properly prosecuted and tried. Women, persons deprived of their liberty, refugees, children, minorities and migrant workers can be identified as particularly vulnerable groups with regard to their freedom of religion or belief. The right to life and the right to liberty are also frequently infringed as evidenced by numerous cases of killings and arbitrary detention for reasons of religion or belief. States have to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, *inter alia*, by the provision of effective remedies in cases where the right to freedom religion or belief is violated.

51. States and non-State actors have to abide by the applicable international human rights standards. Furthermore, rather than waiting until acts of intolerance and discrimination based on religion or belief have been perpetrated, it would be advisable for States to devise proactive strategies in order to prevent such violations. Consequently, education could serve as an essential tool in creating a genuine human rights culture in society. Especially primary and secondary schools may be a suitable place for learning about peace, understanding and tolerance among individuals, groups and nations in order to develop respect for pluralism. States, academic institutions and NGOs should be encouraged to elaborate models for education in religion and ethics in accordance with international human rights instruments, as a follow-up to the 2001 International Consultative Conference on school education in relation to freedom of religion and belief, tolerance and non-discrimination.

52. Furthermore, inter-religious and intra-religious dialogue is vital for the prevention of conflicts. Religions may examine ways of managing the expression of their own internal diversity while at the same time incorporating a genuinely pluralist culture. Inter-religious and intra-religious dialogue should not only include religious leaders but could also involve initiatives at the grassroots level. In this regard, it may be useful to take into account the perspectives of believers who are dispassionate about their faith and of non-believers. Teachers, children and students could also benefit from voluntary opportunities of meetings and exchanges with their counterparts of different religions or beliefs, either in their home country or abroad. Consequently, States should be encouraged to consider promoting regional or international cultural exchanges in the field of education, for example by concluding

agreements relating to such exchange programmes and by providing funding for related grassroots activities.

*Conclusions and recommendations of the Special Rapporteur on freedom of religion or belief  
and the Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance*

HRC/2/3

51. In the light of the above analysis, bearing in mind that the basic premise of the protection of human rights is respect for human dignity and the integrity of all individuals, regardless of their racial, ethnic, religious, gender or group affiliations, the Special Rapporteurs have articulated the conclusions and recommendations set out in the paragraphs below.

52. The Special Rapporteurs recommend that the Human Rights Council call upon Governments of Member States to continue to work for the implementation of the Durban Declaration and Programme of Action, which needs to remain the cornerstone in the combat against racism, racial discrimination, xenophobia and related intolerance. In this regard, the Council is invited to welcome the positive initiative of the Government of Brazil in organizing a regional conference aiming at identifying progress and remaining challenges in the implementation of the Durban Declaration and Programme of Action against racism, racial discrimination, xenophobia and related intolerance, and to encourage other regions to carry out the same analysis with the participation of Governments, civil society and individual experts.

53. The Special Rapporteurs recommend that the Human Rights Council call upon Governments of Member States to express and demonstrate a firm political will and commitment to combating the rise of racial and religious intolerance. In this context Governments should be particularly vigilant in combating the political use of discrimination and xenophobia, notably the ideological and electoral impregnation of racist and xenophobic platforms into the programmes of democratic parties. They should be reminded of their legal and moral obligations pursuant to the pertinent international instruments to give priority to the combat against racism, discrimination, xenophobia and intolerance over convenient governmental political alliances.

54. The Human Rights Council is invited to draw the attention of Member States to the threat to democracy by this trivialization of racism, xenophobia and intolerance, and to encourage human rights organizations and civil society to be mobilized in combating this development. The Council should, in this context, underline the growing negative impact of this development on the national policies and programmes related to immigration, asylum and nationality. The Council should strongly reaffirm the fundamental principle that the respect for human rights, including the eradication of the roots of the culture of racism, xenophobia and intolerance, constitute the strongest pillar of national security and democracy and should not be dependent on any ideological and political convenience.

55. In the light of the global and international impact of issues related to race and ethnicity, culture and religion, the Council should emphasize the international dimension of this political will by inviting Governments to take fully into account the consequences of their national policies on their relations with other Member States, by the sensitivity to and the integration in their national policies of the promotion of the dialogue of cultures and religions and by avoiding policies, postures and statements inspired by the divisive concept of the clash of civilizations.



56. The Special Rapporteurs recommend that the Human Rights Council invite Member States to link the combat against racism, discrimination and xenophobia with the political and constitutional recognition of, the legal respect for and the promotion of multiculturalism, through education, information and communication, both nationally and internationally.

57. The Council should strongly invite Governments, in accordance with pertinent international instruments, to combat the ideology of neo-Nazi groups, to punish their violent racist and xenophobic activities and to uproot the culture of hatred they are promoting, particularly through education, communication and information.

58. The Council should invite Governments, in the fight against racial and religious intolerance, to fully abide by their obligations concerning both freedom of expression and freedom of religion, as prescribed in the pertinent international instruments, and in particular articles 18, 19 and 20 of the International Covenant on Civil and Political Rights, in respect of their interrelation and complementarity.

59. The Council, in this spirit should remind Governments not only of the respect for the restrictions and limitations *stricto sensu* foreseen by these articles but also of the profound meaning of these limitations and restrictions. This is a way of promoting mutual respect and understanding of diversity and democracy and peaceful interactions between members of the society, in particular in multicultural societies.

60. Freedom of religion or belief and freedom of opinion and expression are interdependent, as is the whole body of human rights norms. However, balancing all aspects of human rights is an extremely delicate exercise. It requires neutral and impartial implementation and must be weighed by independent and non-arbitrary bodies. An independent judiciary is thus a vital component in the process of effectively adjudicating cases related to incitement to religious hatred under article 20 of the International Covenant on Civil and Political Rights. It is important to dispassionately determine what constitutes an act pursuant to this provision and to ensure that the guarantees of freedom of expression and freedom of religion are maintained. It is also critical for Governments and the judiciary to ensure that acts that constitute incitement under article 20 of the Covenant are closely monitored and do not enjoy impunity.

61. The Council should promote, in the light of the polarized and confrontational reading of these articles, a more profound reflection on their interpretation. Given the paucity of jurisprudence on article 20 of the Covenant, the Special Rapporteurs consider that the interpretation of its terms and, in particular, a definition of its threshold of application would be particularly welcome in order to avoid confusion or simplistic conclusions regarding its application. For this reason, they would encourage the Human Rights Committee to consider the possibility of adopting complimentary standards on the interrelations between freedom of expression, freedom of religion and non-discrimination, in particular by drafting a general comment on article 20. Furthermore, the Council should invite other pertinent mechanisms and organs of the United Nations system of human rights, and in particular, the Committee on the Elimination of Racial Discrimination, to give priority and urgency to this exercise, in cooperation with the Office of the High Commissioner for Human Rights and the relevant special procedures.

62. Religious controversies are historical. They will continue to demand our attention and challenge us to find creative ways to deal with them. The classic recipes of enacting laws alone may not always work. A continuing dialogue in this regard is essential. It is of vital importance that the debate on these aspects be widened and inspired by the spirit of dialogue amongst religions and cultures, and include voices of all minorities and women, who are often the victims of religious intolerance, and at the same time excluded from dialogues that seek to promote religious harmony.

63. The Special Rapporteurs recommend that the Human Rights Council invite Member States to promote and practise dialogue between cultures, civilizations and religions as a more profound way of combating racial and religious intolerance. To this end, the following related approaches are suggested:

- The promotion of reciprocal knowledge between cultures, civilizations and religions, with a particular emphasis on value systems;
- The adoption of policies and programmes in the fields of education, social, economic and cultural life, favouring the interactions between communities;
- The recognition of the value of cultural and religious diversity associated with the promotion of unity within society; and
- The creation of conditions facilitating the encounter, dialogue and joint action for social harmony, peace, human rights, development and combat against all forms of racism, discrimination and xenophobia.

64. The Special Rapporteurs also recommend that the Council invite the religious and cultural communities to promote an in-depth intercultural and inter-religious dialogue, including joint actions on the issues at the core of their faith - such as peace, human rights and development - and through analysing the internal factors in their beliefs, practices and relationships among them which may have contributed to defamation of religions.

65. In addition, the Special Rapporteurs recommend that the Council remind Member States that efforts to combat defamation of religions, discrimination and incitement to religious hatred also need to be based on the link between the acknowledgment both of the singularity of each form of discrimination, its expressions and manifestations, and that of the universality of their underlying causes and of the efforts to combat them. In this regard, Member States should bear in mind that defamation of religion must receive the same degree of concern and equal treatment regardless of which religion is targeted, thus avoiding hierarchization of forms of discrimination, even if their intensity varies according to history, geography and culture. The recognition, respect and practice of religious pluralism, which encompasses criticism, discussion and questioning of each other's values, should be the cornerstone of their relationships and their combat against all forms of discrimination.

66. In maintaining a pluralist, diverse and tolerant society, Member States should avoid stubbornly clinging to free speech in defiance of the sensitivities existing in a society with absolute disregard for religious feelings, nor suffocating criticism of a religion by making it punishable by law. Rather, one should focus on creating a tolerant and inclusive environment in which all religions and beliefs may be exercised free of discrimination or stigmatization, within reasonable limits. The situation will not be remedied by preventing ideas about religions from being expressed.

## **Conclusions and recommendations of the Special Representative of the Secretary-General on human rights defenders**

*A/HRC/4/37*

105. The progressive achievement of economic, social and cultural rights (ESCR) or the obligation of the State being dependent on the availability of resources should not be misunderstood as allowing States to adopt policies that violate these rights or negate the probability of their realization. The Special Representative recommends appropriate guarantees in national constitutions that give full legitimacy and recognition to activities for the promotion and protection of these rights.

106. Where ESCR are expressed as principles of State policy in the national constitution and not as fundamental rights, States must ensure that these principles are not deviated from and that civil society actors have the full opportunity to participate in discussions of social or economic policies or projects. In particular they must have the opportunity to monitor the effects of such policies and projects, to register their objections and to receive responses from the State with regard to any action that undermines the right to strive for attaining these rights.

107. Judiciaries must, in particular, be vigilant and consistent in upholding the right to peaceful action for attaining social and economic rights. This becomes extremely important considering the mounting pressure on defenders of judicial prosecution for carrying out activities protected by the Declaration on Human Rights Defenders.

108. In line with the preamble of the Declaration on Human Rights Defenders, where it is stressed that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”, the Special Representative urges States to adopt appropriate measures to disseminate and to ensure full observance of the Declaration on Human Rights Defenders by all State authorities in order to make sure that all defenders come under the protection of the Declaration on Human Rights Defenders, including those working in the area of ESCR.

109. The Special Representative recommends that States show increased tolerance for criticism and see human rights defenders working in the field of ESCR as a resource and make use of the often specialized knowledge of defenders in order to achieve the realization of all ESCR.

110. In relation to the above, the Special Representative urges Governments to improve access to information for human rights defenders, as well as access to authorities, also at the local level, and to public meetings in order to express their concerns and recommendations and to participate in assessing the impact of State policies on the realization of ESCR and the actions of private actors in the field of ESCR.

111. The Special Representative suggests that the Committee on Economic, Social and Cultural Rights, as well as Governments, as a part of their support for the work of defenders, encourage defenders and defenders’ organizations to submit shadow-reports to the Committee on the implementation of the International Covenant on Economic, Social and Cultural Rights.

112. The Special Representative encourages Governments to combat impunity for attacks and threats against human rights defenders working in the area of ESCR, as well as in all other areas, in accordance with article 9 of the Declaration on Human Rights Defenders.

113. The Special Representative reminds Governments of their commitments through the Millennium Declaration. She urges them to facilitate human rights defenders' activities that contribute towards achieving the goals of the Millennium Declaration.

## **Conclusions and recommendations of the Special Rapporteur on the independence of judges and lawyers**

A/HRC/4/25

### **Conclusions**

60. Analysis of the activities carried out through communications and missions between 1994 and 2006 highlights the magnitude and gravity of situations adversely affecting the judicial system and those involved in it, and their negative impact on the rule of law.

61. It is a matter of concern that despite the legal guarantees provided by each State and the many international instruments intended to preserve their independence, lawyers, judges, prosecutors and court officers in all regions are frequently subjected to pressures, harassment and threats that may result in their enforced disappearance, assassination or extrajudicial execution, simply because they are doing their job.

62. Also of concern are the wide range of situations which undermine the independence of judicial systems throughout the world, and their impact on the rule of law, insofar as the judiciary is one of its main guardians.

63. The large number and frequency of activities engaged in by the Special Rapporteur through communications and country visits demonstrate the intensity of the work being undertaken and the need to strengthen this procedure. With the support of NGOs and the positive response by States to the Special Rapporteur's communications, it is often possible to prevent or put a stop to many violations. In addition, other types of action, such as that taken in Ecuador where prominent international and judicial figures and institutions were involved in resolving the problems affecting them, may be considered "good practices" that should be followed.

64. A state of emergency is a legal institution governed by the rule of law, so that judicial oversight is of vital importance both in checking that it has been lawfully declared and in protecting human rights while it is in force.

65. However, the activity of the Special Rapporteur shows that the administration of justice in general, and the right to due process in particular, are among the principal victims of exceptional measures. Often, judicial oversight of executive action is weakened by measures intended to undermine the independence of the judicial system during crisis periods. Similarly, through legislative reforms and other provisions, practices such as indefinite detention without charges, restriction of the right to legal aid, the expulsion of foreigners to countries where torture is practised, and the establishment of special pseudo-courts that do not meet the minimum requirements of independence and impartiality have become widespread.

66. The report also covers situations in which the judiciary has displayed independence and determination in responding to such measures, highlighting the importance of efforts by the judiciary to put a stop to *ultra vires* acts by other authorities. Starting from the premise that the lives of citizens must be protected and the fundamental values of the nation upheld, some courts have challenged the grounds governments give for declaring states of emergency, and have, among other things, questioned whether terrorism is an "exceptional danger threatening the life of society". What is more, in many cases they have annulled measures that are particularly detrimental to fundamental rights.

67. The Special Rapporteur pays particular attention in his work to the activities of the specialized tribunals. This report refers to two of them, including the tribunal in Iraq, whose

activities have been followed up in a series of reports, and where he has had to intervene on many occasions as a result of the assassination of judges, lawyers and court officers and the failure to observe international standards relating to the right to a fair trial. The establishment of the Extraordinary Chambers in Cambodia is welcomed, and efforts to end the impunity of those who have committed grave human rights violations are encouraged.

68. Lastly, opportunities for spreading information about the special rapporteurs' activities have increased considerably with developments in computer science and the media. This has also served to enhance the efficiency of their missions and the interest of the general public in their results. Such topical visibility is a fundamental and integral part of the work of experts.

### **Recommendations**

69. The Special Rapporteur invites the Human Rights Council to increase still further its efforts to defend the work being accomplished by different actors involved in the administration of justice and to consider every year the scale and gravity of problems affecting the judicial system and its independence, with a view to recommending that States should adopt specific measures intended to guarantee to judicial employees the safety and protection they require to perform their duties properly.

70. In the light of the findings set out above, it is imperative for the Council to strengthen the work of the Special Rapporteur by granting him the resources he needs to do his work more effectively, and to enable him to expand his activities.

71. It is also important that in its support and technical cooperation activities the United Nations should promote the theme of justice, especially with respect to countries which are in transition or are recovering from an armed conflict which has had a serious impact on nation-building.

72. Bearing in mind that the administration of justice is one of the pillars of the rule of law and the democratic system, the defence of justice must be accorded priority when analysing the institutional aspects encompassed by the activities of the United Nations as a whole.

73. Considering the dynamic and leading role now played by national and international associations of jurists to promote an independent judiciary, it would be appropriate for the United Nations to take account of their input and experience in its technical cooperation and other activities relating to the promotion and protection of human rights. Accordingly, the Special Rapporteur intends to work to bring about this rapprochement between the United Nations and judicial circles.

74. Concerning states of emergency, it is imperative that States should bring their domestic legislation and practices into line with international principles, judicial practice and standards relating to the application of states of emergency.

75. As far as the administration of justice is concerned, it is imperative that legislation relating to states of emergency should in all cases prevent:

(a) Measures which invalidate the provisions of the Constitution or basic law and legislation relating to the appointment, mandate and privileges and immunities of members of the judiciary, and their independence and impartiality;

(b) Measures which limit the jurisdiction of the courts: (i) to consider whether the declaration of a state of emergency is compatible with the laws, Constitution and obligations under international law, and whether it is unlawful or unconstitutional, in the event of incompatibility; (ii) to consider whether any measure adopted by a public authority is compatible with the declaration of the state of emergency; (iii) to take legal action to ensure the observance and protection of any right enshrined in the Constitution or basic law and in

national or international law that is not affected by the declaration of the state of emergency; (iv) to try criminal cases, including offences relating to the state of emergency.

76. Bearing in mind that states of emergency continue to give rise to serious human rights violations, the Special Rapporteur recommends that an international declaration should be drafted which incorporates existing practices and principles and whose purpose is to ensure the observance of human rights and fundamental freedoms during states of emergency. A single text would provide clear guidance for States on how to bring their conduct into line with international law during crisis periods. In this connection, it is recommended that the Human Rights Council should establish a mechanism to draft the declaration, and, at the same time, should seek the opinion of the sectors concerned by this matter. To this end, the Council is requested to ask the Office of the United Nations High Commissioner for Human Rights to hold an international expert seminar during 2007 to prepare the ground for the proposed instrument.

77. As far as the Supreme Iraqi Criminal Tribunal is concerned, the Special Rapporteur reiterates emphatically the recommendations he made to the General Assembly in October 2005: that the Iraqi authorities should be urged to follow the example of other countries with shortcomings in their judicial systems, by seeking the assistance of the United Nations in the establishment of an independent tribunal which complies with international human rights standards; and also that it should refrain from imposing the death penalty under all circumstances.

78. With regard to the Tribunal in Cambodia, the Special Rapporteur urges the judges to ensure that the rules of procedure contain all the necessary provisions to ensure that the trials are conducted in full compliance with international standards relating to the right to a fair, impartial and independent trial.

79. The Special Rapporteur urges all States to ratify promptly the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted recently.

## **Conclusions and recommendations of the Special Rapporteur on indigenous people**

A/HRC/4/32

88. Since the Special Rapporteur's mandate was established, it cannot be said that the human rights situation of indigenous people has so far changed substantially. Progress has been made in some areas, especially in the legislative and judicial spheres. The human rights of indigenous people have acquired greater visibility in some countries as well as internationally, largely thanks to the work of various United Nations bodies, which has culminated for the time being in the Human Rights Council's adoption of the Declaration on the Rights of Indigenous Peoples. In some countries it has been possible to identify good practices leading to the consolidation of the human rights of these people, whose claims and proposals are being expressed ever more vocally, owing to the high degree of social, and sometimes political, mobilization.

89. These advances, however, have encountered numerous obstacles and in some cases also setbacks. In many spheres, there is still a lack of understanding about indigenous rights, linked to the persistence of prejudices and discriminatory, not to say racist, attitudes. More disturbing is the opposition displayed by various national and international private economic interests to the full enjoyment of indigenous rights. Those interests are centred on land ownership and the exploitation of natural resources, especially forestry, water and subsoil resources. They often collude with the structures of political power to impede progress with regard to indigenous people's human rights.

90. This the reason for the implementation gap between legislation, public institutions and actual practice at the local level, and why indicators of social and economic well-being of the vast majority of the indigenous population, especially women, continue to be well below national averages. In order to address this pattern of inequality and injustice that generates permanent human rights violations, indigenous people resort to different forms of social mobilization that, in turn, often provoke the use of public force, and so incur further violations of their rights. This has given rise to patterns of criminalization of indigenous social protest, making it harder to achieve a negotiated and democratic solution to their legitimate demands.

91. Globalization and environmental degradation contribute to the increasing involvement of indigenous people in migratory flows, their growing urbanization and the progressive modification of their cultural and social identity. These processes pose new challenges for the protection of human rights and for the framing of public policies, which require proactive and affirmative approaches, especially in the light of the specific problems facing indigenous women and children. Failure to address the structural causes of these situations will mean that the promises of the Millennium Development Goals will not become a reality for indigenous people, nor will they fully enjoy their human rights.

92. The Council now has the responsibility and the opportunity to take new steps towards international protection of the human rights of indigenous people. States need to display greater political will and capacity to construct efficient mechanisms and structures that will genuinely promote, rather than merely simulate, effective respect for the human rights of indigenous people in their countries. The courts must actively defend those rights and transcend the legal niceties so long invoked to deny indigenous people their rights. Civil society organizations, as well as political parties, must push for the human rights of indigenous people to be placed on their agendas for social and political action. In conclusion, indigenous communities and organizations, which have played such an outstanding role in the defence and promotion of their human rights, must reassess their objectives and strategies,



strengthen and consolidate their alliances, and involve themselves in the processes required to build genuine democratic and plural societies.

*Progress report of the Special Rapporteur on the best practices carried out to implement the recommendations contained in his general and country reports*

A/HRC/4/32/Add.4

77. The various cases reviewed in this study suggest that the Special Rapporteur's thematic and country reports have had a different level of impact. Inasmuch as they have the status of official United Nations documents elaborated from an independent viewpoint, thematic reports are part of ongoing discussions and policymaking concerning issues of special relevance for indigenous peoples, and their impact cannot be easily evaluated in terms of the implementation of the specific recommendations.

78. The Special Rapporteur's country visits have generally had a more direct impact on legal, social and political dynamics at the national level in relation to the recognition and protection of the rights of indigenous peoples. These reports, and the visits themselves, have helped promote spaces of dialogue between States and indigenous peoples; have contributed to educating government actors, civil society and the general public on the situation of indigenous peoples in their own countries; and have been appropriated by indigenous peoples and human rights organizations as an advocacy tool.

79. The recommendations included in the Special Rapporteur's reports do not provide a "magic fix", and do not generate automatic and speedy changes in the situation of the rights of indigenous peoples. The level of implementation of these recommendations varies according to different country situations and the issues tackled by those recommendations.

80. Several initiatives have been undertaken over the last years by Governments, the United Nations system, civil society and indigenous organizations to monitor and promote the implementation of the recommendations included in the Special Rapporteur's reports. These experiences demonstrate that, if left for institutional action alone, the recommendations are rarely implemented, but implementation needs to be pushed forward in close cooperation with the Government and other stakeholders.

81. In countries where follow-up mechanisms exist, institutional efforts towards implementation have been more sustained, leading to concrete changes in law and practice. These mechanisms have taken different forms, such as monitoring bodies, national forums and follow-up missions, and have involved a myriad of governmental and non-governmental actors, as well as international agencies.

82. The process of implementation of the Special Rapporteur's recommendations has opened spaces for dialogue between Governments, civil society and indigenous peoples and organizations. In all cases where substantive advances can be reported, indigenous peoples have been actively involved in the process.

83. The comparative analysis of best practices in several countries shows that the effective changes in implementation of the Special Rapporteur's recommendations are more easily detected in relation to recommendations related to the areas of social policy and development, as well as to the strengthening of specific government institutions and policies related to indigenous affairs. However, many of the main recommendations of the Special Rapporteur's reports remain unaddressed, particularly in the fields of legal and constitutional reform and

indigenous land and resource rights, including the right of consultation in relation to development projects in indigenous territories.

84. These experiences suggest that, despite the advances that can be identified, the general record of implementation of the Special Rapporteur's recommendations is gloomy. Much remains to be done by the Governments, international agencies and other relevant stakeholders to bridge the "implementation gap" that divides international and domestic norms and the serious human rights violations that indigenous peoples continue to experience in all parts of the world.

## **Recommendations**

### **A. Recommendations to Governments**

85. Governments should multiply their efforts to promote effective changes in law and policy in implementation of the Special Rapporteur's recommendations, in compliance with international norms recognizing the rights of indigenous peoples.

86. Governments should publicize and disseminate the Special Rapporteur's reports and recommendations among government institutions, civil society and indigenous peoples. Production of popular versions in various indigenous languages should be seriously considered.

87. Governments should intensify their efforts to train public officials in the rights of indigenous peoples, taking into account the Special Rapporteur's reports and recommendations. The training of judges, prosecutors and public defenders based on these reports should be prioritized.

88. The Governments concerned should establish permanent mechanisms to follow up on the recommendations of the Special Rapporteur's country reports. The mechanisms can include the designation of focal points to promote and coordinate efforts of different government departments and agencies such as interdepartmental working groups or specific units.

89. Governments are encouraged to undertake periodic evaluations of the state of implementation of the Special Rapporteur's recommendations and to publicize the results.

90. Governments should promote the involvement of indigenous peoples in the preparations for and carrying out of the Special Rapporteur's missions. Appropriate mechanisms should be put in place to promote the active participation of indigenous peoples in the implementation of the Special Rapporteur's recommendations.

91. The Governments of Mexico and Guatemala are encouraged to continue the systematic follow-up to the recommendations initiated in close collaborations with OHCHR and indigenous peoples and organizations. The Governments of other countries that have been the object of an official visit by the Special Rapporteur are also encouraged to seek the technical assistance of OHCHR and international agencies in the implementation of the recommendations included in the reports on these visits.

### **B. Recommendations to other State institutions**

92. National parliaments, as well as national human rights institutions, are encouraged to take an active role in monitoring the implementation by all relevant actors of the Special Rapporteur's recommendations.

### **C. Recommendations to indigenous peoples and civil society**

93. Indigenous peoples and organizations, NGOs, academic institutions and other civil society actors are encouraged to strengthen their cooperation in order to foster the implementation of the Special Rapporteur's recommendations. They are also encouraged to use best practices from other countries concerning the establishment of permanent mechanisms and periodic initiatives to monitor the state of implementation.

94. Indigenous peoples and their support organizations are encouraged to strengthen their involvement in the Special Rapporteur's general activities, including involvement in his country visits and dissemination of his reports.

95. Public media are encouraged to pay increased attention to the Special Rapporteur's reports and visits, and to monitor the state of implementation of his recommendations.

#### D. Recommendations to OHCHR

96. The Special Rapporteur invites OHCHR to incorporate, when applicable, the recommendations of his country and thematic reports in its programme activities, particularly in relation to its field presences.

97. OHCHR should continue its assistance to governmental institutions and civil society organizations to ensure follow-up to the Special Rapporteur's reports, taking into account the best practices described in this report.

#### E. Recommendations to international agencies

98. International organizations and agencies, including international financial institutions, should intensify their efforts to implement the Special Rapporteur's recommendations.

99. United Nations country teams should designate a focal point to ensure the promotion and coordination of their activities in implementation of the Special Rapporteur's reports.

100. International organizations and agencies should take into account the recommendations included in the Special Rapporteur's thematic reports in their programming in areas relevant to the rights of indigenous peoples. The Permanent Forum on Indigenous Issues Inter-Agency Group should also include these reports in the discussions on the topics analysed at the Forum's annual sessions.

#### F. Recommendations to the international community

101. International donors should support indigenous peoples and their support organizations to ensure their involvement in the Special Rapporteur's visits and other activities, as well as in their efforts to promote the implementation of his recommendations.

### A/HRC/6/15

65. In the light of the above considerations, the Special Rapporteur submits the following recommendations to Governments and, in particular, agencies responsible for social policy and development; United Nations agencies and international organizations; international financial institutions and aid agencies; domestic and international non-governmental organizations; and indigenous organizations and the indigenous peoples themselves.

#### A. General recommendations

66. The development and implementation of public policies must be guided by the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and other international instruments and by the jurisprudence of the human rights bodies.

67. The objectives of social and development policies and programmes designed for indigenous peoples must be to promote respect for and guarantee compliance with the human rights, individual and collective, of these peoples. Accordingly, these programmes and policies must be formulated and evaluated in terms of their contribution to meeting that goal. This necessitates the development, in cooperation with indigenous peoples, of operational criteria which draw together the activities of the various stakeholders involved, and of indicators to measure the impact of those activities.

68. On no account should development activities be allowed to run counter to the general principles of the human rights of indigenous peoples. Accordingly, there must be a requirement for the conduct of social, cultural and environmental impact studies for projects to be carried out in the lands and areas occupied by indigenous peoples.

69. Social and development policies and programmes relating to indigenous peoples must be based on the free, prior and informed consent of the communities concerned. These communities must be effectively involved in identifying priorities and in designing, implementing and evaluating the development activities intended to help strengthen their capacities and those of their organizations. Priority must be given to development initiatives identified and defined by the indigenous peoples themselves.

70. The design of social and development policies and programmes intended for indigenous peoples must take due account of the individual and collective rights situation of these communities involved, with a view to uncovering the underlying causes of discrimination, exclusion and marginalization. In this process, efforts must be made to identify the holders of these rights, with special attention to the vulnerable and marginalized groups within the indigenous communities, and also the relevant duty bearers.

71. Provision must be made in the regular budgets of States for social and development policies and programmes targeted at indigenous peoples. A rights-based budget approach must be followed, whereby decisions at all stages of the budget process are taken in keeping with the principles of transparency, accountability, non-discrimination and participation.

#### B. Recommendations to donors and international agencies

72. Those engaged in cooperation work should refrain from supporting programmes and projects which, either directly or indirectly, are or could be conducive to the violation of the rights of indigenous peoples in the countries receiving development aid.

73. Cooperation partners should work directly with indigenous communities and organizations.

74. Development cooperation partners should ensure that their activities help strengthen dialogue and cooperative relations between indigenous peoples and the Governments of the countries in which those peoples live, identifying priority areas and the necessary resources to ensure the effective exercise of the rights of indigenous peoples.

75. Development cooperation partners should give particular attention to strengthening the capacities of government and civil-society bodies to ensure the effective exercise of the rights of indigenous peoples, including by supporting the reforms necessary for the incorporation of these rights in legislation and in public policies.

76. At the same time, steps should be taken to strengthen the mechanisms for political participation and accountability which support efforts by indigenous peoples to identify their priorities and exercise their rights.

C. Recommendation to the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme

77. The principles underlying the human rights-based approach to indigenous development must be applied in such a way that they can be drawn on by those responsible for implementing public policy and cooperation, as well as by the indigenous peoples themselves, in the development, preparation, implementation and evaluation of policies, programmes and projects for the benefit of these peoples. The Special Rapporteur recommends that the Office of the High Commissioner and UNDP, as key players in the process of promoting a rights-based approach to development, conduct studies of good practices and prepare a manual on the use of this approach in development activities involving indigenous peoples.

*Report on the situation of the rights of indigenous peoples in Asia*

A/HRC/6/15/Add.3

47. In recent years the plight of indigenous peoples in Asia has started to become a specific issue of concern in the international human rights agenda, as well as in domestic legislation and policies. Indigenous issues are increasingly the object of specific attention by several Asian States in key areas such as land rights, cultural protection, autonomy and self-government and development policies, thus signalling an important change of mentality regarding the recognition of cultural difference and its human rights implications. However, there is still an important implementation gap with regard to existing constitutional and legal provisions, and much remains to be done in order to mainstream indigenous rights in policies and the institutional machinery at the national level. These developments are overshadowed by the human rights violations still suffered by indigenous peoples in some countries of the region as a result of internal conflicts and insensitive official policies.

48. Indigenous peoples in Asian countries face patterns of discrimination and human right abuses similar to indigenous peoples in other parts of the world. Some of the most serious violations are related to the lack of effective protection in domestic laws and policies regarding indigenous rights over their traditional territories, lands and natural resources, as well as to their right to participate in decisions affecting these lands and resources. This has led to widespread violations in practically all countries of the region as a result of land-grabbing and corruption, forced displacement associated with the extension of plantation economies, the construction of megaprojects, and particularly dam construction and mining, and other State development policies.

49. Forest peoples are particularly affected by these dynamics of dispossession and removal, as the forests are quickly disappearing as a result of Government-promoted and illegal logging and other State policies, often with disastrous environmental effects. Pastoralist communities similarly confront the loss of their distinct livelihoods and cultures, essential to nomadic herding, which is frequently deemed “backward” and “unecological” in official discourse and policy.

50. While militarization and State repression are frequently the source of indigenous peoples’ human rights violations in many parts of the world, the recurrent and widespread character of these abuses in Asian countries gives rise to special concern. Decades-long civil conflicts,

insurgency movements, political crimes, and other abuses committed in the name of the struggle against terrorism or secessionism have taken a deadly toll in indigenous and tribal communities. Massacres, killings of social activists and human rights defenders, torture, sexual violence, and displacement are still daily realities for many such communities. While the Special Rapporteur acknowledges the complexity of the various contexts in which these violations occur, the seriousness of these violations leads to the conclusion that the indigenous peoples are widely regarded in many countries as “backward”, second class citizens.

51. A number of constructive arrangements have been put in place in order to accommodate ethnic diversity or to find a peaceful solution to conflicts which have lasted for decades. While these initiatives provide important examples of ways in which the principles of State integrity and autonomy can be combined in the Asian context, a common denominator of ongoing experiences is the lack of implementation of existing legal and political arrangements. Militarization, induced migration, unequal development policies, and resulting human rights abuses are questioning the spirit of such arrangements, while fuelling the conflicts they seek to prevent.

52. As elsewhere in the world, the indigenous women of Asia experience accumulated layers of discrimination and marginalization. They are subject to human rights violations as a result of longstanding conflicts and the impoverishment of their communities. Sexual violence, trafficking and labour exploitation are daily realities for many Asian indigenous women, a problem that is just beginning to be fully understood.

### **Recommendations** (A/HRC/6/15/Add.3)

53. The protection of the rights of indigenous peoples is a human rights imperative that cannot be subordinated to, nor is it contradictory with, the objectives of national unity or development. The Special Rapporteur calls upon Asian States to give priority attention to indigenous issues, regardless of the constitutional and legal status afforded to these groups in their domestic systems, taking into consideration international norms as well as the positive examples found in comparative legislation in Asia and other parts of the world.

54. Asian States should continue their efforts to enter into dialogue with indigenous peoples in order to work out constructive legal and political arrangements, within a spirit of mutual respect, autonomy and self-determination. These demands should not be repressed or criminalized, and their basic human rights should be fully respected at all times, including in situations of conflict.

55. National legislation in Asian countries should incorporate indigenous peoples’ property and use rights over communal lands, forest areas, pastures, and other natural resources, with due regard to indigenous customary laws, traditional lifestyles, and cultural values. Where such legislation exists, renewed efforts should be made in order to make indigenous rights effective, and special emphasis should be put on the demarcation and titling of indigenous lands. The systematic removal of indigenous peoples from their traditional lands as a public policy should be halted, and such removal of indigenous peoples from their traditional lands should be regarded as a last alternative and in cases of utmost necessity, and under condition that they be fully compensated.

56. Indigenous peoples should be involved in decision-making at all levels in the countries in which they live. They should participate in the design and implementation of all policies that may affect them directly, particularly with regard to development projects taking place in their lands and territories.

57. Asian countries should actively promote the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Following the example of Nepal,

consideration should be given to the prompt ratification of ILO Convention No. 169 on Indigenous and Tribal Peoples, particularly by those States that are already parties to the previous ILO Convention, No. 107.

58. International organizations and agencies, as well as international financial institutions, should mainstream indigenous rights into their programmes and activities in Asian countries, on the basis of international norms and their own policy guidelines in this area, irrespective of the level of recognition of these rights in domestic legislation and policies. OHCHR country and regional offices in Asia should further strengthen in their programmes of work the rights of indigenous peoples, particularly of indigenous women. UNDP and ILO should continue their efforts to promote their policies on indigenous peoples. The World Bank, the Asian Development Bank and bilateral donors should ensure that their safeguards and guidelines in relation to indigenous peoples are fully respected in their Asian projects.

## **Conclusions and recommendations of the Representative of the Secretary-General on human rights of internally displaced persons**

A/HRC/4/38

82. Responding to the protection needs of internally displaced persons (IDPs) is one of the main challenges of today's world. For his part, the Representative of the Secretary-General for human rights of internally displaced persons strongly believes that, in carrying out his mandate, he contributes to the efforts that are being undertaken to meet these challenges. In particular, he is of the view that the ongoing development and clarification of the conceptual framework is essential in helping those who directly assist IDPs at the national level. Recalling that States have the ultimate responsibility to protect the human rights of IDPs living on their territory, the Representative continued, during the period under review, to engage in constructive dialogues with Governments with the goal of enhancing the protection of this particularly vulnerable group. In the same line, he also continued his efforts to mainstream the human rights of IDPs in the United Nations system and to advocate for the human rights of IDPs on the global level. Much still needs to be done in order to respond effectively, comprehensively and in a timely manner to the needs of IDPs worldwide, but the Representative is encouraged by the steps that have been taken by many governments, by the international community and the relentless efforts of the civil society.

83. With respect to the countries visited, the Representative:

- (a) Encourages the Governments to implement the recommendations made in his country-specific reports and stands ready to offer ongoing advice and technical assistance;
- (b) Invites national human rights institutions and civil society to follow these efforts, to monitor implementation of his recommendations, and to provide feedback to the relevant institutions on human rights issues associated with displacement.

84. With respect to other countries, the Representative:

- (a) Encourages States, on the basis of the Guiding Principles on Internal Displacement, to prevent and minimize internal displacement and to incorporate the Guiding Principles into their national laws and policies;
- (b) Recalls his willingness to provide technical assistance on issues of internal displacement;
- (c) Encourages civil society to continue to gather information on human rights aspects of internal displacement and to engage in dialogue with their governments, the Representative, OHCHR, UNHCR and others involved in humanitarian assistance to IDPs.

85. With respect to the international community, the Representative:

- (a) Calls upon all agencies working with IDPs to pursue efforts to enhance the protection of IDPs and to mainstream the human rights of these persons into their activities;
- (b) Recommends to United Nations agencies that they seek ways of including the Operational Guidelines on Human Rights and Natural Disasters in both their training programmes and in their programmatic work;
- (c) Calls upon OHCHR to redouble its efforts to promote the human rights of IDPs and to consider ways in which OHCHR field monitors can play a more active role in protecting IDPs; and urges donors to support OHCHR in these efforts;
- (d) Calls upon UNHCR to continue and to strengthen its work as cluster lead for the protection of IDPs in complex emergencies;
- (e) Requests UNDP, as the cluster lead for early recovery, to consider the particular protection needs of IDPs and returning IDPs in the long-term context of development;
- (f) Invites the donor community, when working with specific groups of IDPs to integrate a long-term perspective in their analysis and their programmes until durable solutions are found for the IDPs involved;



- (g) Encourages national human rights institutions and civil society to incorporate the specific protection concerns of IDPs into their on-going work;
- (h) Calls upon regional organizations to consider ways in which they can support the development of both national legislation for countries in their regions and regional standards which promote the human rights of IDPs and recommends that they integrate the Guiding Principles in their institutional frameworks.

**Conclusions and recommendations of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination**

A/HRC/4/42

72. The Working Group welcomes the cooperation it has received from States towards fulfilling its mandate. The Working Group invites all Governments to cooperate, including by means of following up on communications and by extending invitations for the Working Group to visit, and by sharing their experiences of efforts to address the issues of mercenarism, mercenary-related activities and the activities of private military and private security companies.

73. On the basis of its activities in 2006, the Working Group draws the attention to the phenomenon by which individuals from Latin America, and other regions, are being recruited by PMSCs to perform military services in zones of international or non-international armed conflict, with a number of pertinent human rights issues concerning: (a) the civilians affected in countries of conflict; (b) the individuals recruited by PMSCs; and (c) and the related responsibilities of States and PMSCs, respectively. The Working Group notes that unemployment, underemployment and the precariousness of the conditions in the origin countries, invite some individuals to take these employments in spite of the excessive risks.

74. In order to clarify what the international community will accept as State responsibilities in this regard, States are encouraged to hold a round table, preceded by regional preparatory round tables, to reach a policy decision on the fundamental question regarding the monopoly by the State of the use of force. Such a round table could also serve to elucidate which controls are needed to allow PMSCs to carry out activities where the use of force is necessary.

75. The Working Group will continue to monitor a number of situations which are relevant to all aspects of its mandate, including countries used as sites for the recruitment, use, financing and training of individuals to serve in PMSCs domestically or abroad. While the initial focus of the Working Group has been to visit countries where subsidiaries of foreign-registered PMSCs were recruiting employees, the focus of the Working Group is expected to evolve to enable a comprehensive assessment of the issues pertaining to its mandate.

76. To this end, the Working Group issues the following recommendations:

- The Working Group calls upon all States that have not yet done so to consider taking the necessary action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (entered in force in 2001). It encourages States parties to introduce national level legislation against mercenarism, through introducing and adopting specific provisions in the national criminal codes, or to introduce separate legislation on mercenaries. The Working Group also invites Member States to consider also regional standards for possible incorporation in domestic legislation, notably where such instruments are adopted by subregional organizations, as is the case with African Union, the Commonwealth of Independent States and the Economic Community of West African States;
- The Working Group recommends the urgent need to embark on a process of determining the future of the monopoly of States on the use of force, and suggests a process of regional preparatory round tables during 2007 to lead to a global round table in 2008;
- The Working Group urges States to meet the challenge of regulating and attributing the responsibility that arises from the structure and transnational nature of the PMSC industry and its global reach, as well as the exponential growth of the numbers and

activities of PMSCs in different regions. To this end, the Working Group urges States to avoid granting blanket immunity, leading to effective impunity, to PMSCs and their personnel;

- The Working Group recommends thresholds of permissible activities, enhanced regulation and oversight of PMSCs at the national levels, including the establishment of regulatory systems of registration and licensing of PMSCs and individuals working for them. Such regulation should include defining minimum requirements for transparency and accountability of firms, screening and vetting of personnel, and establish a monitoring system including parliamentary oversight. States should impose a specific ban on PMSCs intervening in internal or international armed conflicts or actions aiming at destabilizing constitutional regimes;
- The Working Group recommends human rights components in education and training programmes to be offered to the staff of PMSCs, including on international humanitarian law, international human rights law, and United Nations standards on the use of force;
- The Working Group recommends that, in order to fulfil the complex mandate and challenges given to it under Commission resolution 2005/2 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.

## **Conclusions and recommendations of the Special Rapporteur on the human rights of migrants**

A/HRC/4/24

138. The Special Rapporteur would like to thank the Governments of more than 20 countries that have responded to his questionnaire. He is greatly encouraged by the responses and states that it represents an important attempt to document the efforts of States working towards the improvement of the protection of the human rights of migrants. This certainly leaves room for improvement but it also shows some signs of hope.

139. The Special Rapporteur welcomes the numerous initiatives by States that have stemmed from the High-Level Dialogue, including the forthcoming Global Forum on Migration and Development to be hosted by the Government of Belgium. The Global Forum would provide an opportunity to identify best practices, exchange experiences, identify obstacles to be removed, explore and adapt innovative approaches and enhance cooperation between countries in a process that involves Governments and other stakeholders as appropriate.

140. The Special Rapporteur would like to make the following recommendations for consideration by the Global Forum:

- A large variety of stakeholders should participate in the Global Forum on Migration and Development, including adequate representation of young migrants, migrant women and migrants from indigenous groups, with a view to ensure an inclusive process;
- United Nations human rights mechanisms, including the special procedures mandate-holders and the members of the Committee on Migrant Workers, should also be invited to participate and share their views, findings and recommendations;
- Member States should take concrete measures to include a human dimension when formulating migration policies, such as providing both documented and undocumented migrants access to the enjoyment of basic economic, social and cultural rights, including access to health care, education and basic services;
- Member States should demonstrate their commitment towards improving the rights of migrants by ratifying the International Convention on the Protection of All Migrant Workers and Members of Their Families;
- A voluntary fund to support the participation in the Global Forum should be made available for the funding of least developed countries and other stakeholders, especially civil society representatives and migrant groups, in order to have adequate attendance from all sectors.

## **Conclusions and recommendations of the Independent Expert on minority issues**

A/HRC/4/9

### **Conclusions**

101. In all countries, developed and developing, the high levels and disproportionate poverty of persons belonging to minorities requires dedicated attention and concerted action. The initial step for States in designing development policies must be to assess their obligations under human rights treaties and customary law. Within the wider framework of a human rights-based approach to development, the rights to non-discrimination, to participation in decision-making and to protection of cultural identity are crucial to addressing the inequality and exclusion faced by many minorities.

102. The Millennium Declaration establishes an overarching commitment in Goal 8 to “develop a global partnership for development”. Developed countries and the international community have a shared responsibility to address more fully the structural issues facing developing countries in eradicating poverty in general and specifically disproportionate poverty among minorities.

103. The situation of minority women demands particular attention. The intersection of discrimination on the basis of gender and minority identity should be considered systematically in the reform of policies aimed at poverty elimination. It is well accepted that women from marginalized populations are the overwhelming number of those living in poverty worldwide.

### **Recommendations**

104. The Independent Expert recommends that States:

(a) Gather data on key economic and social indicators concerning the human development of persons belonging to minorities, including through censuses or sampling surveys, to establish sufficient baseline data to design appropriate policy responses. The data, disaggregated by different specific ethnic, religious and linguistic group and also by gender, should be made public.

(b) Establish mechanisms for meaningful dialogue with representatives of minority communities about development policies, particularly at the local government level. At the national level, the creation of statutory bodies composed of representatives of minority communities mandated to review and monitor government policy as it may affect minorities has proved useful.

(c) Strengthen the legal and regulatory framework for addressing direct and indirect discrimination in both public and private spheres. Effective non-discrimination laws in key sectors such as employment and education can reduce obstacles that minorities face in overcoming poverty. Remedies and recourse procedures in discrimination cases should be readily accessible to minorities with penalties that are substantial and vigorously enforced.

(d) Adopt targeted and aggressive affirmative action policies for addressing the social exclusion of minorities, including a specific social and economic development plan for all marginalized groups. Affirmative action programmes should include the private sector as well as the public sector.

(e) Establish monitoring and evaluation mechanisms that can effectively measure the results of poverty reduction strategies that target minorities.

(f) Ensure that the MDG Country Reports and PRSPs, systematically reflect the situation of minorities, and that all review procedures monitor the impact of policies on minorities. Data

disaggregated by social group and gender should be included in all PRSPs and MDG Country Reports.

105. Long-term success in poverty reduction for minorities requires an investment in tackling the root causes. In particular, States should consider measures in the following key areas:

(a) Education: Measures should include; addressing situations that result in segregation of minority children into different classrooms or facilities on the basis of their identity; increased access to education in mother-tongue languages; consideration of targeted financial assistance, or reserved places in secondary and higher education; curriculum development to reflect human rights education, minority cultures, and contributions of minorities to wider society.

(b) Employment: Measures to promote minority access to employment should include targeted skills training, investment in regions where minorities live, robust enforcement of anti-discrimination laws with respect to hiring, promotion and retention of minorities in the labour sector, penalties for violations of such laws that are sufficiently harsh to be a deterrent, targeted credit schemes and other support for small businesses. Affirmative action measures in public and private sector employment should be implemented to address long-term discrimination and exclusion of minorities.

(c) Land and property rights: Governments should adopt and enforce laws that safeguard the equal rights of minorities to land and property. Land laws should recognize a variety of forms of ownership, both individual and collective. Minorities should be enabled to register legal title to their land. Legal remedy and/or compensation should be made available to those previously displaced from their homes or traditional lands. The rights of women belonging to minority groups to own and inherit land must be equal to that of men.

(d) Participation in decision-making: minorities have a right to participate effectively in decision-making on local or national issues and development plans that affect them or the regions in which they live. Support for participation, such as through reserved seats in governance or dedicated consultative institutions, should be prioritized.

106. The Independent Expert recommends that International development agencies:

(a) Adopt policy guidelines on minority issues which specifically address the particular issues faced by persons belonging to a broader array of minority populations in addition to Indigenous peoples.

(b) Build institutional capacity and knowledge on the situation of minorities, particularly in respect to poverty and other human development indicators. This may include training for staff on the human rights of minorities and applying human rights-based approaches to development.

(c) Undertake dialogues with minorities on development priorities, including through the establishment of minority advisory groups. Regional dialogues on minority issues may also be facilitated by international development agencies.

(d) Collect disaggregated data on the impact on minorities of policies, programmes and projects and support national statistics offices to build their capacity to collect and disseminate such data.

(e) Monitor budgetary support to ensure that resource allocations are appropriately targeting minorities or the regions in which they live and raise such approaches as matters of priority in consultations with government decision-makers.

(f) Support States in the preparation of MDG Country Reports, PRSPs and all review procedures associated with these modalities to ensure that the impact of policies on minorities is appropriately covered.

(g) Commission further research on the impact of development and poverty reduction strategies on minorities and ensure that country strategy papers for development cooperation reflect the situation of minorities and are published in minority languages.

(h) Establish budget lines to support work on minority issues in development. This may include funding to minority groups within civil society, investment in key sectors, or investment in regions where the poorest minorities live.

107. The United Nations, regional and national human rights institutions are recommended to:

(a) Provide necessary technical support on the drafting, implementation and enforcement of laws on non-discrimination and on laws and standards to protect the rights of minorities including the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

(b) Integrate consideration of minority rights into research, dialogue and training on the human rights-based approach to development.

(c) Ensure that efforts to establish human rights-based indicators of human development include the elaboration of indicators with relevance to minorities.

108. The 2003 Guidance Note on Country Reporting on the MDGs of the United Nations Development Group should be revised to clearly reflect a requirement for the collection and inclusion of disaggregated data by race, ethnicity and religion, and guidelines in this regard.

109. The Independent Expert's mandate requires her to identify best practices. She strongly encourages States and international development actors to share with her further information on positive practices undertaken to develop strong policies and technical cooperation initiatives on poverty reduction in communities of historically marginalized minority populations.

*Thematic report of the Independent Expert on minority issues achieving the millennium development goals (MDGs) for minorities*

A/HRC/4/9/Add.1

### **Conclusions and recommendations**

113. There is an urgent need to take the situation of persons belonging to minorities fully into account in the efforts of the international community to achieve the MDGs and to implement the Millennium Declaration. This review of MDG country reports reveals a serious lack of attention to the situation of persons belonging to minorities, who disproportionately experience poverty and lower levels of human development. Only a third of Reports reviewed mentioned minorities one or more times and barely 20 per cent of the Reports discussed the situation of minorities under four or more of the Goals. In none of the Reports was the situation of minorities mentioned under each of the 8 Goals. Minorities are mentioned most often in relation to Goal 2 on access to primary education.

114. In all cases, very few examples of specific policies for minorities were noted and disaggregated data on progress towards the MDGs was rarely included. The result is that the likelihood of persons belonging to minorities achieving the MDGs (where they have not done so already) remains obscured. This lack of information is not necessarily conclusive of practice on the ground, but it does suggest that ensuring strategies for the MDGs include attention to minorities, is still a low priority for most governments.

115. There is an absence of a comprehensive understanding of the poverty of minorities and its manifestations in the social, economic, cultural and political spheres. In particular, even in those Reports where minorities are mentioned, there is a lack of discussion on how and,

crucially, why, minorities are experiencing disproportionately high levels of poverty and other serious inequalities. Ignoring the root causes of poverty and low human development only serves to weaken the effectiveness of MDG policies and PRSPs. The issue of discrimination, both direct and indirect, is noticeably absent in the poverty analyses and also in policy responses for poverty reduction. Discussion of other rights of minorities is rarely evidenced in the Reports.

116. Women belonging to minority groups remain invisible in poverty reduction efforts. The compound effects of intersectional discrimination on the basis of gender and a national, ethnic, religious or linguistic identity means minority women continue to be among the most excluded. While attention to gender issues in many MDG country reports is positive, this does not extend to consideration of intersectional discrimination nor targeted policies for marginalized minority women.

117. It is clear in many of the Reports that reforms to poverty data collection is a high priority. Given that most Reports omit disaggregated data on the basis of membership in a national, ethnic, religious or linguistic group, efforts to improve poverty data can mainstream ethnocultural data collection. This represents one of the more effective uses of resources in the short to medium term for helping to improve the monitoring and evaluation of existing MDG policies. Corresponding MDGs Plus targets and indicators disaggregated by social group will be supported by these efforts.

118. The three PRSPs reviewed here demonstrate that attention to marginalized minorities can be integrated into broader poverty reduction strategies. While resources and capacity are vital factors, the starting point for improving the impact of poverty reduction on minorities is political will. MDG country reports and PRSPs are flagships for this political will and if the situation of minorities is analyzed better in these documents, accompanied by requisite strategies, this can serve to empower minorities to realize their human rights.

119. The participation of minorities in the elaboration of PRSPs and MDG related strategies risks being tokenistic. The purpose of their participation is not to satisfy external donors or political interests: it both fulfils their right to participate and their role in determining their own future. If poverty reduction and the MDGs are to make a difference in the lives of the most marginalized, they must be given the opportunity to help decide how this will happen.

120. Each country will need to consider the particular challenges faced by persons within their territory for achieving the MDGs. There are many factors that make realization of the MDGs a challenge, including the need for increased development assistance, better transparency in governance and economic, social and political stability. It is important to recall, however, the objective of the Millennium Declaration, to “strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, *including minority rights*”. This objective must not be forgotten when it comes to devising strategies for the MDGs, so that when we reach 2015, marginalized minorities are not left further behind.

121. The independent expert on minority issues has made recommendations in the field of poverty alleviation and the MDGs in her Annual Report to the Human Rights Council in March 2007 (A/HRC/4/9). Taking into account these recommendations and based on consultations, the independent expert makes the following further general recommendations to States, the United Nations and its agencies, international development agencies, human rights institutions and civil society, including representatives of minorities, on practical steps that can be taken in the following key areas:

**Data collection:**



122. Integrate indicators on the situation of persons belonging to minorities into national strategies on data collection. The United Nations Inter-Agency and Expert Group (IAEG) on MDG Indicators should support States in this effort.

123. Add a specific indicator under each of the Goals to assess horizontal inequalities in progress towards the Goals.

124. Review national census questionnaires to ensure that ethno-cultural data is being collected.

125. Use sampling surveys or participatory impact assessments to gather information on how persons belonging to minorities are benefiting (or not) from MDG-related programmes.

126. Publish and distribute data on key economic and social indicators for persons belonging to minorities as a baseline to enable the elaboration and monitoring of MDG strategies.

127. Translate into minority languages data on key economic and social indicators and make this information publicly and easily accessible to persons belonging to minorities.

128. Be sensitive to cultural identity issues when gathering data to ensure that minorities are able to participate confidently in data collection activities; ensure that privacy laws are not breached in data collection.

129. Undertake research on key issues in relation to the achievement of the MDGs by persons belonging to minorities, such as analysis of appropriate policies in education, healthcare and housing.

130. Invest in national statistics offices, to provide training (including to persons belonging to minorities) on how to collect data on minorities and to enable the distribution of this data.

#### **Consultative bodies:**

131. Cooperate with existing national consultative bodies on minorities to improve the participation of minorities in MDG-related strategies.

132. Establish consultative bodies at the local and national level that enable minorities to engage in planning for MDG-related strategies.

133. Ensure that minorities are informed about and represented in any thematic-specific consultative processes on the MDGs, e.g. on the gender equality MDGs.

134. Ensure that marginalized groups within minority communities, in particular minority women, are able to participate fully in consultations on the MDGs.

135. Facilitate local, national and regional civil society dialogues on the MDGs to enable networking and the elaboration of proposals to government on the MDGs.

136. Engage parliamentarians and the media in dialogues on the situation of minorities and the achievement of the MDGs.

#### **National action plans:**

137. Draft national action plans in cooperation with persons belonging to minorities on how to ensure that minorities benefit equally from progress towards the MDGs.

138. Devise country-specific MDG Plus indicators pertaining to minorities.

139. Ensure that MDG-related strategies are accompanied by measures to strengthen the legal and regulatory framework necessary for the protection of human rights, including minority rights.

140. Adopt affirmative action policies where the gaps in achieving the MDGs are severe for minorities, e.g. in relation to access to primary education.

141. Civil society should undertake advocacy campaigns pertaining to the MDGs to raise public awareness about the situation of persons belonging to minorities. The media should be used as a partner to raise awareness of timely issues of concern to minorities.

142. Civil society should consider using legal mechanisms to secure human rights in relation to the MDGs, for example, taking legal cases on involuntary displacement of minorities.

**Capacity building:**

143. Disseminate information on the MDGs and MDG-related strategies to minority communities, including through publishing public information in minority languages, through local radio and traditional meeting processes.

144. Provide training for representatives of minorities on monitoring progress towards the MDGs, in particular on themes such as budget monitoring.

145. Provide training for development professionals and parliamentarians working on MDG-related strategies on the situation of minorities and minority rights. Such training may be particularly useful for UNDP Country Teams who play a key role in supporting such strategies.

146. Toolkits and guidelines published on the MDGs should integrate consideration of the situation of minorities.

147. The UNDP should take the lead in establishing an Inter-Agency Task Force on Minorities and the MDGs to mobilise United Nations agencies and United Nations Country Teams to take further steps to support the integration of minorities into MDG-related strategies.

148. Civil society participation in MDG-related strategies should be facilitated through specially designated funding lines for this aim.

149. The UNDP should proceed with the elaboration and adoption of a specific Policy Note on Minorities to assist governments and UNDP Country Teams, *inter alia*, with the integration of minorities into MDG strategies.

**MDG country reports:**

150. All MDG country reports should include consideration of the situation of minorities in relation to each of the Goals. Disaggregated data on the progress of minorities towards the Goals should be included.

151. MDG country reports should aim to include MDG Plus indicators for minorities where appropriate.

152. MDG country reports should reflect an analysis of the intersection of discrimination on the basis of gender and membership in a national, ethnic, religious or linguistic social group.

153. The UNDP's *Guidance Note on Country Reporting for MDGs* (2003) should be revised to include more in-depth analysis and recommendations on how Country Reports and strategies for the MDGs can better support marginalized minorities.

154. MDG country reports should be published in minority languages as appropriate and made publicly and easily accessible to persons belonging to minorities.

155. Civil society should consider drafting MDG Shadow Country Reports as one means of highlighting issues omitted from the official MDG country reports, such as those issues of concern to minorities.

## **Conclusions and recommendations of the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance**

A/HRC/4/19

54. The Special Rapporteur invites the Human Rights Council to draw the attention of the 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.

55. In this regard, he invites the Council to encourage member States to adopt, as a matter of urgency, national legislation against racism, racial discrimination and xenophobia, pursuant to article 4, paragraphs (a) and (b), of the International Convention on the Elimination of All Forms of Racial Discrimination.

56. In the same spirit, the Council is invited to encourage member States to demonstrate renewed commitment to the implementation of the Durban Declaration and Programme of Action. The Special Rapporteur also encourages the organization, in cooperation with the Office of the United Nations High Commissioner for Human Rights, of regional conferences to assess the progress of and challenges and obstacles to the implementation of the Declaration and Programme of Action, following the example of the Regional Conference of the Americas held in Brasilia in July 2006, which brought together Governments, affected communities, civil society and international and regional organizations, on the basis of the respective assessment reports of all these regional actors and leading to specific regional programmes for submission to the Human Rights Council.

57. The Human Rights Council is invited to draw the attention of member States to the serious nature of the defamation of religion, anti-Semitism and Christianophobia and, more particularly, Islamophobia, and to promote the fight against these phenomena by strengthening the role of interreligious and intercultural dialogue, promoting reciprocal understanding and joint action to meet the fundamental challenges of development, peace and the protection and promotion of human rights.

58. The Human Rights 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 the freedom of religion and by acknowledging and respecting the complementarity of all the freedoms contained in the International Covenant on Civil and Political Rights.

59. 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.

60. In a similar vein, the Human Rights 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 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.

61. To this end, 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, of combating, through education and information, ideas and concepts likely to incite or legitimize racism, racial discrimination or xenophobia, in particular via the Internet.

62. 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, that promote respect for their rights.

63. The Human Rights Council is invited to stress the gravity 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, in particular, for immigrants and asylum-seekers.

64. The Human Rights Council is invited to encourage member States to exercise particular vigilance with regard to the upsurge in racism in sport, particularly football. The Human Rights Council is also invited to support and promote specific initiatives and measures by member States in the areas of education, awareness-raising and prevention, and to support programmes and initiatives by international sports bodies, in particular FIFA, whose effectiveness was demonstrated by the fact that the recent World Cup in Germany passed without incident.

65. In order to prevent the resurgence of racism and xenophobia and the association of race, 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 the Office of the United Nations High Commissioner for Human Rights, a centre for monitoring racist phenomena, in the same vein as the European Monitoring Centre on Racism and Xenophobia, whose excellent work makes it possible to obtain a clear and quantitative picture of racism and xenophobia in Europe.

*Updated study on political platforms which promote or incite racial discrimination*

A/HRC/5/10

### **Conclusions and recommendations**

60. The current resurgence of racism, racial discrimination, xenophobia and related intolerance represents a major threat not only to the rights of the victims but also to the development of democracy and social cohesion. This threat has attained new and alarming heights in the context of the current global “war on terror”, as a result of intellectual legitimization of racist and xenophobic ideas via public discourse, and the translation into public policies by mainstream political parties of perspectives that were formally promoted by far-right political movements.

61. The following strategic lines of action are strongly recommended to counter the banalisation and the democratization of racism and to uproot the deeper sources of the growing racist and political platforms all over the world:

(a) A stronger manifestation of political will to combat racism, racial discrimination and xenophobia, based on the awareness of the resurgence of all forms of racism and its serious threat to democracy. Political parties should provide leadership in the fight against racism and xenophobia by taking concrete steps to promote solidarity, tolerance, respect and recognition of vulnerable groups as full members of society, inter alia, by developing and implementing

voluntary codes of conduct in favour of a non-racist society. Such codes of conduct should include a commitment not to engage in incitement to racism, racial discrimination, xenophobia and related intolerance, both within the party and in society at large; lay out a set of internal disciplinary measures for violations thereof; and undertake not to form coalition governments with parties and groups that advocate for or incite racism, racial discrimination, xenophobia and related intolerance;

(b) With a view to strengthening democracy, States should encourage the participation of groups that are especially vulnerable to racism and racial discrimination in the political life of their countries, taking into consideration their possible contribution to the reinforcement of the anti-discrimination perspective. Particular attention should be paid to specific ways in which racism, racial discrimination and xenophobia impact on women and other groups especially vulnerable to racism and discrimination, and the synergic effects of the multiple forms of discrimination they encounter;

(c) The implementation of all pertinent human rights instruments to fight racism, racial discrimination and xenophobia, in particular the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action. Member States should also adopt all necessary legal, political, administrative and judiciary measures to ensure the respect and complementarity of the fundamental rights guaranteed by the pertinent international legal instruments, in particular regarding freedom of expression and freedom of religion, to uproot the growing incitement to racial and religious hatred;

(d) The linkage and complementarity of the combat against racism, racial discrimination and xenophobia with the long-term construction of a democratic, non-discriminatory and interactive multicultural society, based on the recognition, respect and promotion of cultural, ethnic and religious diversity;

(e) The promotion of intercultural and inter-religious dialogue, both at the national and international level, on the basis of two interrelated strategies: the deepening of reciprocal knowledge between the different communities and the practice of social, cultural and religious interactions between them on the basis of universal values.

*Report on the manifestation of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights*

A/HRC/6/6

**Recommendations**

73. The Special Rapporteur recommends that the Human Rights Council call upon Governments of Member States to continue to work for the implementation of the Durban Declaration and Programme of Action, which needs to remain the cornerstone in the combat against racism, racial discrimination, xenophobia and related intolerance.

74. The Special Rapporteur invites the Council to call upon Governments of Member States to express and demonstrate a firm political will and commitment to combating the rise of racial and religious hatred. In this context Governments should be particularly vigilant in combating the political use of discrimination and xenophobia, notably the ideological and electoral impregnation of racist and xenophobic platforms into the programmes of democratic parties, and should strongly reaffirm the principle that the respect for human rights, including the eradication of the roots of the culture of racism, xenophobia and intolerance, constitute the strongest pillar of national security and democracy and should not be dependent on any ideological and political convenience.

75. The Special Rapporteur invites the Council, in measures adopted to combat racism and discrimination, to take fully into account the increasing intertwining of race, ethnicity, culture

and religion that characterizes the current political and ideological context, and to call upon Member States to integrate, in their national policies, the promotion of the dialogue between cultures and religions and avoid policies, postures and statements inspired by the divisive concept of the clash of civilizations.

76. The Special Rapporteur recommends that the Council invite Governments, in the fight against racial and religious hatred, to fully abide by their obligations concerning both freedom of expression and freedom of religion, as prescribed in the pertinent international instruments, and in particular articles 18, 19 and 20 of the International Covenant on Civil and Political Rights, in respect of their interrelation and complementarity.

77. In the light of the polarized and confrontational reading of these articles, the Special Rapporteur wishes to recall the recommendation made to the Council in his joint report with the Special Rapporteur on freedom of religion or belief (A/HRC/2/3) to promote a more profound reflection on their interpretation. In particular, both Special Rapporteurs 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 by drafting a general comment on article 20.

78. The Special Rapporteur recommends that the Council invite Member States to adopt approaches in the promotion of dialogue between cultures, civilizations and religions taking into consideration:

(a) The need to provide equal treatment to the combat of all forms of defamation of religions, thus avoiding hierarchization of forms of discrimination, even though their intensity may vary according to history, geography and culture;

(b) The historical and cultural depth of all forms of defamation of religions, and therefore the need to complement legal strategies with an intellectual and ethical strategy relating to the processes, mechanisms and representations which constitute those manifestations over time;

(c) The fundamental link between the spiritual, historical and cultural singularity of each form of defamation of religions and the universality of their underlying causes;

(d) The creation of conditions facilitating the encounter, dialogue and joint action of all religions and spiritual traditions for social harmony, peace, human rights, development and combat against all forms of racism, discrimination and xenophobia;

(e) The need to pay particular attention and vigilance to maintain a careful balance between secularism and the respect of freedom of religion. A growing anti-religious culture and rhetoric is a central source of defamation of all religions and discrimination against their believers and practitioners. In this context governments should pay a particular attention to guaranteeing and protecting the places of worship and culture of all religions.

79. The Special Rapporteur strongly recommends that the practice of intercultural and inter-religious dialogue start at the national level. Efforts to promote cultural and religious pluralism domestically constitute a necessary and credible first step to providing a long-lasting solution to the problem of defamation of religions.

80. The Special Rapporteur recommends that the Council invite the religious and cultural communities that are victims of these forms of defamation of religions not only to promote in-depth intercultural and inter-religious dialogue, including through the establishment of joint structures in each country in which they coexist, but also to explore the internal factors in their beliefs and practices which may have contributed to these forms of defamation of religions.

**Conclusions and recommendations of the independent expert on the effect of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights**

A/HRC/4/10

70. Over the period covered by this report, the Bretton Woods institutions have meanwhile changed their concept of debt sustainability from a static indicator (debt to export ratio), essentially used for debt relief purposes, to a forward-looking analytical tool designed to avoid the accumulation of unsustainable debt. However, the key objective of the framework still remains the financial ability to service debt rather than the ability to achieve wider development objectives. The creation of country-owned and participatory peer review mechanisms could, and should, provide alternative and complementary views on debt sustainability by focusing on the achievement of the Millennium Development Goals (MDGs) and mainstreaming human rights as key thresholds for debt sustainability.

71. Creditors and borrowing countries have a shared responsibility for the current debt situation of poor developing countries. Therefore, forward-looking sustainability analysis tools should guide both parties in their decisions and in the choice of an adequate mix of concessional loans and grants. In this regard, the primary responsibility of borrowing countries to ensure that availed credits are invested in a productive and human rights promoting way cannot be over-emphasized; for a productive use of credits usually creates the capacity to service the corresponding debt.

72. The aggregate amount of debt to be ultimately cancelled through the Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief (MDR) initiatives (US\$ 100 billion) is modest compared to the overall magnitude of the debt burden of poor developing countries (US\$ 426 billion) and middle-income countries (US\$ 2.3 trillion). When weighted against the overall poverty and MDGs related expenditures, including donor-funded development projects, debt service savings through HIPC and MDR initiatives are probably too small to have a measurable impact on MDGs achievement or desired human rights improvement. Under the circumstances, there remains the need for comprehensive solutions to the debt problems of poor countries, including further debt relief by other multilateral institutions, and for permanent solutions to the problems of bilateral and commercial debts. Innovative relief mechanisms such as different forms of debt swaps merit careful consideration. Accordingly, future relief operations should, among other measures, include an agreed definition of illegitimate debt and pay particular attention to such debt. The independent expert calls upon all multilateral, bilateral and commercial creditors to assume a moral obligation to define own transparent criteria for the illegitimacy of debt and to proceed to the cancellation of such debt.

73. Conditionality links between debt relief and economic reform policies should be revised and streamlined. Conditionality for debt relief should be limited to the macroeconomic and structural framework directly relevant for the core objectives of debt relief, i.e. the re-establishment of a comprehensively defined debt sustainability criteria and contribution to the achievement of MDGs.

74. While it is widely recognized that broad macroeconomic stability lays the basis for economic growth, there is not yet any consensus on an optimal level of stability and on whether the extent of stability promoted by Bretton Woods institutions (e.g. in the case of IMF inflation thresholds) can even damage growth. Economic reform programmes should not be based on one-size-fits-all macroeconomic solutions and should instead take the situation of the individual country into account.



75. Privatization of State enterprises can often improve the quantity and quality of available goods and services, and lower their prices. In the case of goods and services subject to economic, social and cultural rights (e.g. access to drinking water) the privatization can lead to better availability. However, privatization decisions should not only be based on narrow and purely economic considerations, but also on a sound analysis of all the functions that publicly-owned enterprises serve, in particular with regards to accessibility to goods and services that result in the realization of pertinent human rights. Such detailed assessment should consider, inter alia, the advantages of different forms of ownership, including public, private and mixed forms, based on each country's set of social, economic, political and cultural circumstances. In the case of basic services, such analysis should be guided by the objective to best ensure the provision of affordable quality services to all segments of the population. In any event, decisions regarding ownership structure should be made locally, and foreign loans and aid/assistance should not be tied to any preconditions in this regard.

76. Trade reform can be a powerful tool for improving availability and access to goods and services that are essential to the realization of basic human rights. In order to fulfil this function, trade liberalization must be based on sound economic and social impact assessments, allowing for a careful design and scheduling of reform steps. Adequate transition periods with temporary or permanent exclusion of strategic products or subsectors from liberalization should be defined with a view to maximizing human rights and development benefits. Human rights-inspired safeguard clauses in trade agreements should also be considered. Trade liberalization in poor developing countries should not be conducted without putting in place adequate safety nets for the most vulnerable population. It should always be combined with measures to improve the productive capacity of such country's economy and to strengthen its competitiveness on the global market. This requires not only an adequate policy by the concerned countries but also improved donor aid in all trade related areas.

77. One of the aspects of economic policy reform most linked to the human rights agenda is the development of good governance. Efforts should not merely focus on public sector downsizing but also on a more efficient public sector that delivers quality services. The reference framework for public sector reform should include a matrix on the appropriate role and size of Government, an appropriate system for setting performance objectives and measuring progress against them, and a reformed pay structure conducive to attracting, retaining and motivating highly qualified staff.

78. Structural reforms that impact human rights, especially in such sectors as health and education, should always be guided by the international human rights obligations the countries concerned have undertaken to fulfil. So far, however, current studies indicate that most economic reform programmes are only partially coherent with those obligations. Health reform targets increased public spending in primary, essentially preventive health care, while education reform focused on primary education. Yet, user fees have, in general, been an obstacle to the full enjoyment of human rights in these two sectors and reform programmes should, therefore, take into account both the obligations for a progressive abolition of fees and avoidance of user fees or other charges.

## **Concluding remarks of the Special Rapporteur on human rights and international solidarity**

A/HRC/4/8

47. The world has become more globalized and the interaction between international actors is more rapid, so there are new challenges to be faced. The benefits and burdens of this global world are not evenly distributed and, without wishing to say that globalization has a detrimental impact on the world, it does produce some negative effects. The world needs a fairer distribution of the benefits of globalization. Furthermore, globalization has also rendered the interaction between international actors more and more interdependent, and has engendered a more humane approach, including that of upholding the rights of people in the light of human rights.

48. The independent expert in his second report has concentrated on three major areas of focus which reflect global issues and their challenges. International solidarity need to be more developed in international relations for the sake of human rights. Global responses to natural disasters, diseases and agricultural pests are tangible issues, which profoundly affect human life and need more concerted efforts to address them. Third-generation rights are not new, and need to be acknowledged in United Nations human rights instruments to better address global challenges. By means of this second report, the independent expert intends to bring about further acknowledgement of international solidarity as a right of peoples. The independent expert sees the duty of solidarity as an imperative prerequisite of globalization.

49. The report of the High Commissioner for Human Rights to the 2005 session of the Economic and Social Council (E/2005/65) addressed the human rights dimension of the Millennium Declaration and in particular the links between human rights and the Millennium Development Goals, since human rights and the goals share similar motivations and are complementary in their approaches. The independent expert calls for more resources to be available to developing countries for the purpose of meeting the Millennium Development Goals.

50. It has been argued in this report that the international community must accept international solidarity as the right of peoples. In addition, this report also introduces potential actions, by proposing practical measures as a set of examples. This report also adds new potential issues, such as avian influenza as one of the potential pandemic diseases. The independent expert has also been willing to highlight issues that have received less international attention, such as agricultural pests, with the intention of supporting efforts on poverty eradication and fighting hunger.

## Conclusions and recommendations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

A/HRC/4/26

### A. Profiling

83. Terrorist-profiling practices that are based on “race” are incompatible with human rights. Profiling based on ethnicity, national origin and/or religion involves differential treatment of comparable groups of people. Such differential treatment is only compatible with the principle of non-discrimination if it is a proportionate means of countering terrorism. Profiling practices based on ethnicity, national origin and/or religion regularly fail to meet this demanding proportionality requirement: not only are they unsuitable and ineffective means of identifying potential terrorists, but they also entail considerable negative consequences that may render these measures counterproductive in the fight against terrorism.

84. The Special Rapporteur recommends either universal or random security checks as preferred alternatives, instead of measures based on profiling. Universal or random checks are non-discriminatory and at the same time impossible for terrorists to evade, and hence more effective than measures based on profiling.

85. To the extent that States are to rely on counter-terrorism efforts based on profiling, the Special Rapporteur recommends they be based on individual conduct, that is, behaviour rather than ethnic or religious characteristics.

86. The Special Rapporteur recommends that States establish clear and strict standards as to what factors law-enforcement agents may or may not employ for their search efforts in the counter-terrorism context. These guidelines should make clear that criteria such as ethnicity, national origin and religion may only be used in very limited circumstances: namely, for *descriptive* profiles or where there is specific intelligence suggesting that someone fulfilling these characteristics is preparing a terrorist act. Furthermore, these standards should make clear that any terrorist-profiling practices that involve interference with the freedom of movement, the right to liberty or the right to privacy - regardless of the criteria on which they are based - must strictly comply with the principle of proportionality.

87. The Special Rapporteur calls on States to ensure that the use of terrorist-profiling practices by law-enforcement agencies is clearly documented and monitored. Thus, law-enforcement officers should be required to record the stops and searches they carry out for counter-terrorism purposes, including the outcomes of the stops. This data is not only crucial in ensuring an effective independent supervision of the counter-terrorism practices employed by law-enforcement agencies but may also be helpful for the internal analysis of the efficiency of these practices. Factors such as ethnicity or religion may be included in these records but only subject to safeguards such as collecting this data from the persons concerned and separately from the original interference.

88. The Special Rapporteur urges States to establish systems of transparent and independent oversight of law-enforcement agencies to monitor and ensure compliance of counter-terrorism practices with human rights standards and operational guidelines. States must also provide effective means of holding law-enforcement agents accountable for any violations of human rights, including when committed in the context of countering terrorism.

89. The Special Rapporteur calls on States to develop and implement a system of training of law-enforcement officials that includes clear instructions as to what factors they may

legitimately employ for terrorist profiles as well as a substantial training component on human rights and non-discrimination. Importantly, such training of law-enforcement agents should make clear that profiling based on stereotypical generalizations that certain ethnic or religious groups pose a greater terrorist risk than others is not only impermissible but also ineffective and even counterproductive.

## **B. Suicide attacks**

90. Suicide attacks as a specific form of terrorism pose significant challenges to counter-terrorism measures that are at the same time effective and compatible with human rights. State responses to the risk of suicide attacks demonstrate in a dramatic way the risks inherent in “profiling”. Combined with shoot-to-kill policies or other forms of relaxing the standards related to the use of firearms, “profiling” can have lethal consequences for totally innocent individuals.

91. The Special Rapporteur recommends scrupulous adherence to and systematic training in existing international standards on the use of firearms by law-enforcement officials. Further, also in the context of preventing suicide attacks, the Special Rapporteur reiterates his recommendation to apply either universal or random security checks, instead of measures based on profiling.

92. The Special Rapporteur stresses that the counter-terrorism measures need to be continuously and carefully evaluated in order to ensure that they do not breach human rights. Further, in the context of preventing suicide terrorism, special attention should be paid to the treatment of women and especially pregnant women and their security and integrity in counter-terrorism measures, as there is a risk that women and especially pregnant women may become targeted by a new wave of counter-terrorism measures.

93. States should develop adequate training for all law-enforcement personnel, including private security agencies, and in this way ensure that human rights guide counter-terrorism measures and not vice versa. Intelligence agencies need urgently to address the complex cultural and socio-economic issues around suicide attacks and terrorism in general.

94. The Special Rapporteur also notes that scientific research on explaining the phenomenon of suicide terrorism is unsatisfactory. More resources should be invested in research on both the conditions conducive to the spread of suicide bombings as well as methods employed by States and other actors to combat this form of terrorism.

95. The Special Rapporteur encourages the attempts by non-governmental organizations that are involved in narrowing the gap between groups that may be tempted to resort to terrorism and majority populations, e.g. in Afghanistan, Israel and Sri Lanka.

96. The Special Rapporteur urges States to engage in global peacebuilding efforts and raise awareness among their populations about existing human rights standards and legitimate methods to react to human rights violations. These efforts include widespread human rights education to all parts of the populations in their territories.

97. Finally, the Special Rapporteur calls upon States to develop their methods of combating the conditions conducive of suicide bombings. This evidently includes measures to ensure that the human rights of all persons are respected, without discrimination.

## **Conclusions**

69. The Special Rapporteur concludes that counter-terrorism measures have both a direct and an indirect impact on the enjoyment of economic, social and cultural rights. The measures adopted by States to combat terrorism often pose serious challenges to economic, social and cultural rights. States therefore need to be mindful of their duty to ensure the conditions allowing all people living within their jurisdiction to enjoy all human rights, including economic, social and cultural rights. This is particularly important as the promotion of those rights should be seen as a means of addressing conditions conducive to the spread of terrorism and hence of preventing acts of terrorism.

70. The social and economic marginalization of and discrimination against vulnerable groups, such as minorities, indigenous peoples or underprivileged households of women and children often amount to violations of their human rights, in particular of their economic, social and cultural rights. These circumstances may also provide fertile soil for recruitment to movements that promise a prospect for change but resort to the unacceptable means of acts of terrorism.

71. Through their negative impact on the effective enjoyment of economic, social and cultural rights, insensitive counter-terrorism measures, even when they may have a justification as permissible limitations to human rights, often result in counterproductive effects that undermine the long-term beneficial role of the promotion of economic, social and cultural rights in sustainable strategies to prevent terrorism.

## **Recommendations**

72. With reference to his country-specific work, the Special Rapporteur makes the following recommendations:

(a) Without attempting to be exhaustive, the Special Rapporteur wishes to illustrate possible strategies and concrete steps in the field of the promotion and protection of economic, social and cultural rights while countering terrorism, by way of recommendations based on the experience of countries with which he has engaged in close cooperation;

(b) Referring to his “desktop study” on Australia (A/HRC/4/26/Add.3), the Special Rapporteur recommends that, when Australia and other donor countries assist other States to adopt and develop their counter-terrorism laws and mechanisms, due attention be paid to securing the compliance of those measures with human rights and to ensuring that technical or other assistance in the counter-terrorism field is not provided at the expense of development assistance, including programmes aimed at promoting economic, social and cultural rights. The Special Rapporteur recommends that development cooperation be furthered, keeping in mind the strategic importance of the promotion of economic, social and cultural rights in preventing terrorism and the need to avoid undermining that potential by shifting resources from such programming to short-term capacity-building and technical assistance in the field of counter-terrorism;

(c) In his report on his mission to Israel, which included visits to the Occupied Palestinian Territory (A/HRC/6/17/Add.4), the Special Rapporteur addressed the adverse human rights consequences of the security barrier/wall constructed by Israel along and inside the Occupied Palestinian Territory, and its negative impact on, inter alia, the rights to work, health, housing and education. The Special Rapporteur recommends that the Government of Israel make an immediate decision to withdraw all Israeli settlements from the Occupied Palestinian Territory and replace the still unfinished barrier, which extends deep into Palestinian territory, with a security infrastructure that, by its geographical position, respects the Green Line or is otherwise accepted by the Palestinians. While that decision is being implemented, the Special

Rapporteur recommends that urgent action be taken to ensure that the permits regime, the administration of checkpoints and all other associated measures in the Occupied Palestinian Territory do not have a disproportionate impact on the enjoyment of human rights, including economic, social and cultural rights;

(d) With reference to his missions to South Africa (A/HRC/6/17/Add.2) and the United States of America (A/HRC/6/17/Add.3), and to his earlier thematic report related to freedom of assembly and association, including in the context of listing terrorist entities (A/61/267, paras. 30-38), the Special Rapporteur recommends that these and other countries engage in a dialogue with relevant communities engaged in charity work in order to secure the availability of accessible and effective channels for charity that can be resorted to without the fear of donations being later stigmatized by the United Nations or the authorities of any country as financing or material support to terrorism. The Special Rapporteur is mindful of the fact that charity is seen as a religious duty by many Muslims, Christians and others; donors must therefore be able to choose a charity that is compatible with their convictions. Furthermore, charity work often plays an important role in enhancing the actual enjoyment of economic, social and cultural rights in poor countries;

(e) On the basis of his country visit to Turkey (A/HRC/4/26/Add.2), the Special Rapporteur recommends that attention continue to be paid to providing for victims of terrorism and of counter-terrorism operations not only compensation, but also measures that address rehabilitative and other needs of the victims, including by ensuring a safe environment to allow persons who wish to return to their home villages to do so. Emphasizing that full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism, the Special Rapporteur recommends that steps be taken to secure for everyone, including the Kurdish population, effective access to education, which should be enhanced through, at least, initial immersion in their mother tongue;

(f) With reference to his reports on his missions to Israel (A/HRC/6/17/Add.4) and Turkey, the Special Rapporteur urges Governments to ensure that any demolition of housing or other destruction of private property conducted as a measure aimed at combating or preventing terrorism is resorted to in strict compliance with international standards of international law and is accompanied by adequate reparation. Given that the high emotional impact of such measures could easily lead to counterproductive effects in the fight against terrorism, the Special Rapporteur recommends that Governments exercise extreme caution when resorting to such measures.

73. With reference to States and the international community in general, the Special Rapporteur makes the following recommendations:

(a) The Special Rapporteur encourages all States and intergovernmental organizations, while countering terrorism, to take into account relevant instruments for the protection and promotion of economic, social and cultural rights, in order both to avoid violations and minimize the negative impact on those rights in the fight against terrorism, and to utilize fully the potential of promoting economic, social and cultural rights as an inherent feature of long-term sustainable strategies to prevent terrorism. In particular, the Special Rapporteur recommends that the Counter-Terrorism Committee of the Security Council address these issues in order to provide guidance to Member States;

(b) The Special Rapporteur recommends that more attention be paid to the right to education as a key right in the enjoyment of several other human rights and as a cornerstone in sustainable long-term strategies for the prevention of terrorism;

(c) The Special Rapporteur recommends that attention be paid systematically to the rights of women and gender issues in the context of combating terrorism, including by securing the effective enjoyment by women of economic, social and cultural rights as another cornerstone in sustainable long-term strategies for the prevention of terrorism;

(d) The Special Rapporteur urges States not to apply their counter-terrorism laws and measures to social movements or protest by indigenous peoples or minority communities who

claim recognition and full protection for their economic, social and cultural rights, including the right to enjoy their own distinctive culture, which is often associated with lands and specific forms of livelihood. He recommends strict adherence to the principle that terrorism should be defined through its inexcusable methods of violence against bystanders and its intention to create fear among the general population rather than through political or other aims, which often overlap with the aims of social movements that have nothing to do with terrorist acts;

(e) Reiterating the final recommendation of his latest report to the General Assembly (A/62/263), the Special Rapporteur recommends that States and intergovernmental organizations commit themselves to a greater sharing of responsibility in protracted refugee situations, which today are often intertwined with military insurgency, armed conflict and, at times, terrorist acts against civilians, and that such joint efforts be based on a transparent, profound and responsible analysis of conditions allowing for the return of refugees as well as of the existence and risk of conditions that may be conducive to the recruitment of terrorists and the spread of terrorism, and greater international coordination and cooperation to resolve conflicts and stabilize societies. Due attention to economic, social and cultural rights is crucial in this context;

(f) The Special Rapporteur recommends that all States include adequate guarantees to ensure compliance with human rights, including the requirement of legality and the availability of judicial review in their national procedures for the listing of individuals and entities as terrorist, affecting the right to property, in the implementation of Security Council resolution 1267 (1999) or otherwise.

74. With specific reference to the United Nations and its human rights mechanisms, the Special Rapporteur makes the following recommendations:

(a) The Special Rapporteur recommends that all relevant special procedures and mechanisms of the Human Rights Council and human rights treaty bodies consider the protection and promotion of human rights within their mandates, with a special focus on economic, social and cultural rights, in the context of measures to combat terrorism, and coordinate their efforts as appropriate, in order to promote a consistent approach to this subject. He recommends that the Office of the United Nations High Commissioner for Human Rights continue to update its digest of jurisprudence on the protection of human rights while countering terrorism and include in that compilation a new section on treaty body and special procedures practice with regard to economic, social and cultural rights;

(b) The Special Rapporteur recommends that the Committee on Economic, Social and Cultural Rights and other treaty bodies that have economic, social and cultural rights within their mandates develop a systematic practice of addressing counter-terrorism measures by States while monitoring the implementation of respective treaties. In particular, the Special Rapporteur recommends that the Committee on Economic, Social and Cultural Rights adopt a general comment on economic, social and cultural rights and combating terrorism.

**Conclusions and recommendations of the Special Rapporteur on torture, and other  
inhuman or degrading treatment or punishment**

*A/HRC/4/33*

This report contains no specific section on recommendations. Nevertheless, the Special Rapporteur further submitted a report to the Human Rights Council on follow-up to country recommendations (*A/HRC/7/3/Add.2*).



## **Conclusions and recommendations of the Special Rapporteur on adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights**

A/HRC/5/5

58. In conformity with the mandate of the Commission on Human Rights, most of the preceding reports by the Special Rapporteur have focused primarily on the adverse effects on the enjoyment of human rights of populations in developing countries from illicit movements of toxic and dangerous products and wastes. This report focuses not only on violations of human rights occurring in developing countries, but rather seeks to explore the potential violations of human rights in all countries affected by armed conflict. It is important to note however, that a release of toxic chemicals may have more important consequences in developing countries affected by armed conflicts. Indeed, in this context, uncontrolled urban development might place residential areas close to potential military objectives which contain dangerous products at particular risk. Access to medical help for resulting health problems may be more difficult, information about the dangers may not be as accessible and the capacity of the State to conduct an effective clean-up may be jeopardized by lack of resources.

59. Armed conflicts, by their nature, have immediate and grave effects on the enjoyment of many human rights. Naturally, humanitarian organizations, non-governmental organizations and media tend to focus on and respond to these immediate consequences; for example, the killing of civilians, mistreatment of prisoners, rightly receive widespread media attention. This report has sought to show that although the effects might not be as shocking and immediate, the release of toxic products during armed conflicts has grave and long-term impacts on the enjoyment of human rights.

60. There have been many studies on the impact of war on the environment from the legal standpoint, including humanitarian law and environmental law, and also from scientific analysis, such as the studies prepared by the Post-Conflict Branch of the United Nations Environment Programme. However, there have rarely been studies on the impact of this phenomenon on human rights. The Special Rapporteur believes that applying a rights-based approach could contribute to the prevention of such events, while ensuring better management of their negative effects. A rights-based approach might improve access to health services for victims, knowledge of measures that are to be adopted and chances to obtain redress.

61. In addition to calling for a response to the release of toxic products during armed conflict which integrates a human rights approach, the Special Rapporteur would like to make the following recommendations:

- The Special Rapporteur urges parties to armed conflicts to respect international humanitarian law, notably by taking into account the potential consequences of the release of toxic and dangerous products on the life and health of the civilian population and on the environment. When evaluating the lawfulness of an attack, they must be fully aware of their responsibilities for such attacks;
- The Special Rapporteur recommends that States identify and conduct assessments of potential “hotspots” in territories under their jurisdiction or control as soon as hostilities permit, or at the latest at the end of hostilities;
- The Special Rapporteur encourages parties to a conflict to share information about industrial sites containing dangerous and toxic products, which if released could have consequences on the life and health of the civilian population;
- The local authorities should give notice to the local population as soon as information concerning the risks posed by a deliberate or incidental release of toxic products

becomes available, to allow the affected population to take measures to safeguard their health;

- Sites which have been contaminated following the release of toxic and dangerous products should be the object of a rapid and adequate clean-up procedure. This includes the disposal of contaminated war debris, unexploded ordnance and military equipment in a manner that is consistent with international environmental standards;
- In order to mitigate damage to the environment, parties to a conflict should facilitate the access of specialized clean-up crews to the site of dispersion, in particular in the case of oil spills, as soon as hostilities allow or at the latest at the end of hostilities;
- The Special Rapporteur welcomes the work of the Post-Conflict Branch of the United Nations Environment Programme, and invites States to collaborate with this unit and to facilitate its initiatives, notably in the conduct of post-conflict assessments and capacity strengthening initiatives;
- The Special Rapporteur recommends that technical assistance be provided to States facing non-international armed conflicts or other situations of crisis in order to help them control the flow of toxic and dangerous products and wastes, and encourages regional cooperation in this matter, such as the Environment and Security initiative in Central Asia.

## **Conclusions and recommendations of the Special Rapporteur on trafficking in persons, especially women and children**

A/HRC/4/23

61. The phenomenon of forced marriages of women and girls in the context of trafficking in persons is widespread, is devastating for its victims and has a serious impact on women's status in those societies where it occurs.

62. To successfully combat forced marriages in the context of trafficking in persons, States must, in accordance with existing international agreements, put into place measures that prevent women and children from becoming victims of forced marriages, including measures that discourage the demand. States are obliged to ensure the safety of victims and their access to adequate and appropriate assistance. Finally, States are required to adopt legislation to criminalize forced marriages in the context of trafficking in persons and prosecute those responsible, while safeguarding the rights of the victims.

63. The Special Rapporteur recommends that:

Prevention of forced marriage in the context of trafficking in persons, especially women and children

(a) Measures to prevent and combat forced marriages be included in national action plans that focus on trafficking in persons, especially women and children, and, similarly, in national action plans on violence against women and girls;

(b) States establish special units and/or working groups, such as the Forced Marriages Unit of the United Kingdom, within law enforcement agencies or other appropriate public authorities. These agencies should be responsible for investigating and/or prosecuting cases of forced marriage in the context of trafficking in persons. In collaboration with NGOs and organizations in civil society, these agencies could also be responsible for collecting and publicizing information on forced marriages;

(c) States adopt marriage legislation that stipulates a minimum statutory age for marriage of 18 years of age, and ensure that the legislation applies equally to women and men. Such legislation should be compatible with international human rights standards and the best interests of children must be a primary consideration;

(d) States amend their immigration legislation so that victims of forced marriages are not dependent upon their spouses for legal immigration status but can obtain residence permits independently of their continued relation to their husbands. Governments should recognize forced marriage, especially in the context of trafficking in persons, as a condition giving rise to a claim of asylum based on gender-related violence and other forms of human rights violations, and ensure that the women and girls concerned are not deported;

(e) States ensure that key actors such as law enforcement personnel, judges and prosecutors, diplomatic and consular staff and immigration authorities are trained in the legal, economic, cultural, social and other aspects of forced marriage in the context of trafficking in persons, in how to identify, assist and protect victims, and in rigorous prosecution of the perpetrators;

(f) States develop and conduct public awareness campaigns relating to the nature and harm of forced marriages in the context of trafficking in persons. Such campaigns could target the public, community leaders, teachers, health-care personnel and others, as well as women and girls vulnerable to forced marriages, and those who demand women and girls for the purpose of forced marriages;

(g) States ensure that persons holding dual nationality, who are more vulnerable to forced marriage in the name of "protecting their individual ethnicity and tradition", are made aware of the laws on marriages of the countries in which they live and that forced marriage is a form of violence and may also be a means or an end to human trafficking in which the victim may be confined to a lifetime of exploitation;

(h) Traditional, religious or cultural practices or domestic laws and policies should not be used to justify violations of international human rights norms and standards. Thus, customs, whether religious, cultural or traditional, should not be invoked to legitimize forced marriages of any kind. Such marriages are inconsistent with international legal principles;

(i) States ensure that gender-disaggregated data on the incidence of forced marriages internationally, regionally and nationally are collected, reported and compared as part of crime, gender equality and migration statistics;

#### Measures that discourage the demand

(j) In order to deter those who provide the demand for women and girls under 18 years of age for forced marriages, States put into place different preventive measures as well as legislation that criminalizes the demand for forced marriages, especially in the context of trafficking in persons, including the demand for so-called mail-order or Internet brides;

(k) The marriage-marketing trade be closely monitored and rigorous protection mechanisms established for the persons concerned. The Special Rapporteur also urges States to draft, adopt and implement legislation such as the law in the Philippines that outlaws the activities of marriage brokers, and investigate networks and individuals that organize trafficking in women and girls for the purpose of forced marriages;

(l) States ensure that men who apply for visas for a foreign spouse undergo background and criminal-record checks, and that the issuing of such visas be monitored in order to identify men who have a history of serial forced or broker-facilitated marriages. In some countries, non-governmental organizations and immigration authorities have reported that a number of men who apply for visas for a foreign spouse have a long and documented history of violence against women. Also, they may have applied for more than one such visa. Women who entered the country as the spouses of these men have in many cases ended up in shelters for battered women, and in some cases been deported. Protection and assistance of victims of forced marriage in the context of trafficking in persons, especially women and children

(m) States ensure that all girls are given equal access to education and educational institutions, and enforce their right to education through mandatory measures as well as through scholarships and tuition programmes, trust funds and other measures that facilitate their education. This move for literacy should include legal and economic literacy, which should be regarded as an important step in supporting not only the returning victims of forced marriage, but also act as a catalyst for preventing the offence of forced marriage;

(n) States consider simplifying the nullification process for a forced marriage, develop measures that enable victims of forced marriage, including in the context of trafficking in persons, to sue perpetrators under the civil law for damages and, where necessary, extend limitation periods for civil litigation and criminal prosecution of forced marriages;

(o) States support public authorities and non-governmental and community-based organizations that already assist victims of domestic violence and sexual assault, including immigrant women and children, and establish more facilities to protect and assist victims of trafficking, including safe shelters that provide services such as security, housing, legal advice, employment, education, health care, childcare and relocation assistance for women and girls fleeing actual or threatened forced marriages. These shelters should, together with appropriate consular and other authorities, assist in the safe repatriation of those who have undergone forced marriages abroad, if desired;

#### Legislation and prosecution of forced marriage in the context of trafficking in persons, especially women and children

(p) States include in their criminal-law provisions a specific offence of “forced marriage”, with penalties reflecting the seriousness of the crime. Such legal provisions should criminalize those who seek and procure women and girls for forced marriage, those who aid and abet the contracting of such marriages, as well as those who profit from the exploitation of the trafficked persons subjected to such marriages;

(q) Criminal provisions, such as those pertaining to rape, sexual abuse and battering, also be invoked when prosecuting perpetrators of forced marriages because victims of forced marriages often suffer regular sexual, physical and other bodily and psychological violations committed by their spouses;

(r) States must ensure that children under 18 years of age are not allowed to marry as this is inconsistent with international human rights norms and standards, that harmful traditional practices such as dowry and bride-price are made illegal, and that marriage by proxy, including over the telephone, and polygamy are strictly prohibited in law and policy.

**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/4/35

**Conclusion**

82. The permissive conditions for business-related human rights abuses today are created by a misalignment between economic forces and governance capacity. Only a realignment can fix the problem. In principle, public authorities set the rules within which business operates. But at the national level some Governments may simply be unable to take effective action, whether or not the will to do so is present. And in the international arena States themselves compete for access to markets and investments, thus collective action problems may restrict or impede their serving as the international community's "public authority". The most vulnerable people and communities pay the heaviest price for these governance gaps.

83. There are lessons to be drawn from earlier periods. The Victorian era of globalization collapsed because Governments and business failed to manage its adverse impact on the core values of social community. Similarly, the attempt to restore a laissez-faire international economy after the First World War barely made it off the ground before degenerating into the destructive political "isms" that ascended from the left and right, and for which history will remember the first half of the twentieth century – all championed in the name of social protection against economic forces controlled by "others". There are few indications that such extreme reactions are taking root today, but this is the dystopia that States and businesses need to consider, and avoid, as they assess the current situation and where it might lead. Human rights and the sustainability of globalization are inextricably linked.

84. This report has identified areas of fluidity in the business and human rights constellation, which in some respects may be seen as hopeful signs. By far the most consequential legal development is the gradual extension of liability to companies for international crimes, under domestic jurisdiction but reflecting international standards. But this trend is largely an unanticipated by-product of States strengthening the legal regime for individuals, and its actual operation will reflect variations in national practice, which is not an ideal solution for anyone. No comparably consistent hard law developments were found in any other areas of human rights, which leaves large protection gaps for victims, as well as predictability gaps for companies who may still get tried in "courts of public opinion".

85. Considerable innovation was found in soft law initiatives, both intergovernmental and, even more so, the multi-stakeholder hybrids. In the latter, individual States most directly concerned with a pressing problem collaborate directly with business and civil society to establish voluntary regulatory systems in specific operational contexts. In addition, self-regulation by business through company codes and collective initiatives, often undertaken in collaboration with civil society, also exhibits innovation and policy diffusion. All of these approaches show some potential, despite obvious weaknesses. The biggest challenge is bringing such efforts to a scale where they become truly systemic interventions. For that to occur, States need to more proactively structure business incentives and disincentives, while accountability practices must be more deeply embedded within market mechanisms themselves.

86. Judging from the treaty body commentaries, and reinforced by the Special Representative's questionnaire survey of States, not all State structures as a whole appear to

have internalized the full meaning of the State duty to protect, nor its implications with regard to preventing and punishing abuses by non-State actors, including business. Nor do States seem to be taking full advantage of the many legal and policy tools at their disposal to meet their treaty obligations. Insofar as the duty to protect lies at the very foundation of the international human rights regime, this uncertainty gives rise to concern.

87. Lack of clarity regarding the implications of the duty to protect also affects how corporate “sphere of influence” is understood. This concept has no legal pedigree beyond fairly direct agency relationships. But in exploring its potential utility as a practical policy tool the Special Representative has discovered that it cannot easily be separated operationally from the State duty to protect. Where Governments lack capacity or abdicate their duties, the corporate sphere of influence looms large by default, not due to any principled underpinning. Indeed, disputes between Governments and businesses over just where the boundaries of their respective responsibilities lie are ending up in courts. The soft law hybrids have made a singular contribution by acknowledging that for some purposes the most sensible solution is to base initiatives on the notion of “shared responsibility”. This is a conclusion some moral philosophers have also reached with regard to global structural inequities that cannot be solved by individual liability regimes alone. This critical nexus requires greater clarification.

88. The extensive research and consultations conducted for this mandate demonstrate that no single silver bullet can resolve the business and human rights challenge. A broad array of measures is required, by all relevant actors. Mapping existing and emerging standards and practices was an essential first step. What flows logically from the current report is the need for a strategic assessment of the major legal and policy measures that States and other social actors could take, together with views and recommendations about which options or combinations might work best to create effective remedies on the ground. But because the mandate effectively made only 18 months available to the Special Representative, it has not been possible for him to build on his work and submit to the Council the “views and recommendations” resolution 2005/69 invited. Therefore, he would welcome a one-year extension to complete the assignment. As has been his custom throughout, he would continue to hold transparent consultations with all stakeholders during this process and in advance of submitting his views and recommendations in his next (and final) report to the Council.

## **Conclusions of the Special Rapporteur on violence against women, its causes and consequences**

### *Intersections between culture and violence against women*

A/HRC/4/34

#### **Conclusions**

67. Cultures, including the universal human rights culture, are contested sites. Historically, women, individually and collectively, in the Global North and in the South have actively resisted and negotiated oppressive cultural practices. The interconnectedness of local resistance movements evolved into an international women's movement which succeeded in transforming the international human rights law to address the specific ways in which violation of women's rights occur. This culminated in a comprehensive agenda that recognizes violence against women as a human rights violation that must be condemned regardless of whether the violence is grounded in traditional, religious or cultural practices.

68. However, despite the fact that the international community has recognized the universality of rights, identity politics and cultural relativist paradigms are increasingly employed to constrain in particular the rights of women. Essentialized interpretations of culture are used either to justify violation of women's rights in the name of culture or to categorically condemn cultures "out there" as being inherently primitive and violent towards women. Both variants of cultural essentialism ignore the universal dimensions of patriarchal culture that subordinates, albeit differently, women in all societies and fails to recognize women's active agency in resisting and negotiating culture to improve their terms of existence.

69. Making culture the divisor of rights and singling out specific practices as the only culturally sanctioned form of violence that deserves to be denounced or defended inherently de-links violence against women from its root causes and fragments and complicates the struggles against gender-based violence, particularly for women in the South whose salvation becomes one of denying themselves their own cultural identity. Such a polarized perception of violence against women undermines the universal application of international human rights norms and prevents a scrutiny of domestic culture with respect to human rights implications.

70. This report has argued that cultural essentialism, in its orientalist as well as occidentalist variations, are based on several myths that need to be challenged if we are to move forward in the international human rights agenda in general and the elimination of violence against women in particular. These are: (i) depicting culture as immutable and static; (ii) culture as homogenous; and (iii) culture as apolitical and detached from the material foundation of life. Such myths privilege dominant representations of culture while denying space for alternative voices; they cloud over the material basis of life that underpins cultural claims, thus overlooking the political and economic conditions that sustain the violation of women's rights.

71. Compromising women's rights is not an option. Therefore, the challenge that confronts us today is to respect and prize our diverse cultures while developing common strategies to resist oppressive practices in the name of culture, and to promote and uphold universal human rights while rejecting encroachments grounded in ethnocentric thinking.

72. In view of the above discussions, a viable strategy in addressing the issue of culture and violence against women must include, but not be limited to, the following broad guidelines:  
(a) Problematizing culture as historically constructed and representing diverse subject positions and interests:



- (i) Interrogating and negotiating culture and identifying positive elements of culture, including human rights culture, and integrating them in strategies to transform oppressive practices defended in the name of culture;
- (ii) Dismantling the victim narrative of specific groups of women by recording, documenting and disseminating women's agency and common struggles in diverse settings;
- (iii) Recognizing the commonalities of women's struggles of oppression that go beyond specific cultural boundaries;
- (b) Applying a political-economy perspective to understanding cultural practices:
  - (i) Addressing social, economic and political factors that underlie and reinforce harmful cultural paradigms that subordinate women;
  - (ii) Recognizing the political and economic nature of gender inequality and the prevailing forms of violence against women;
  - (iii) Challenging those who defend oppressive practices for women and disclose the vested interests that underpin certain practices;
  - (iv) Recognizing that protection of rights needs not only the transformation of cultural norms and attitudes but also changing their material foundation;
- (c) Approaching all forms of violence against women as a continuum and intersectional with other forms of inequality:
  - (i) Avoiding compartmentalized and selective approaches to the elimination of violence against women that de-link the problem from its underlying causes;
  - (ii) Documenting the cross-cultural commonalities in the diverse manifestation of violence against women;
  - (iii) Making explicit reference to the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women in all normative and policy frameworks relating to cultural diversity and group-based rights. Withdrawing all reservations to the Convention, especially articles 2, 9, 15 and 16, which were entered with reference to culture, tradition, custom and/or religion;
  - (iv) Ensuring that diverse women's voices within specific communities are heard and that their claim for a right to a life free of violence is not sacrificed in the name of culture;
  - (v) Applying the existing international legal framework for the protection of individuals (including human rights law, the law of armed conflict and refugee law) to fully address the specific concerns of women, including violence against women and gender-related persecution.