

HUMAN RIGHTS COUNCIL

COMPILATION OF SPECIAL PROCEDURES' RECOMMENDATIONS BY COUNTRY

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

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

The present document compiles recommendations by special procedures after visits carried out in 2006; recommendations which are included in various reports submitted to the Human Rights Council.

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

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

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

Thematic Special Procedures' 2006 country visits

Thematic Special Procedures' 2006 country visits

In 2006 Special Procedures

- undertook **48 fact finding country visits** (including follow up visits)

As of July 2007, 57 States had extended a standing invitation to all Special Procedures

Country	Mandate	Date of visit
Australia	▪ SR on adequate housing, Mr. Miloon Kothari	31 July – 15 August 2006
Azerbaijan	▪ SR on freedom of religion, Ms. Asma Jahangir	26 February- 6 March 2006
Bahrain	▪ SR on trafficking in persons, especially women and children, Ms. Sigma Huda	29 October – 1 November 2006
Burundi	▪ IE on the human rights situation in Burundi, Mr Akich Okola	7 – 14 October 2006
Cambodia	▪ SRSG on the situation of human rights in Cambodia, Mr. Yash Ghai	19 - 28 March 2006; 22 November - 2 December 2006
Colombia	▪ RSG on internally displaced persons, Mr. Walter Kälin	15 - 28 June 2006
Côte d'Ivoire	▪ RSG on internally displaced persons, Mr. Walter Kälin	17 - 25 April 2006
Ecuador	▪ WG on arbitrary detention, Chairperson: Ms. Leila Zerrougui ▪ SR on indigenous people, Mr. Rodolfo Stavenhagen ▪ WG on mercenaries, Chairperson: Ms. Amada Benavides de Pérez	13 – 23 February 2006 28 April- 4 May 2006 28 August – 1 September 2006
Ethiopia	▪ IE on minority issues, Ms. Gay J. McDougall	27 November - 8 December 2006
Germany	▪ SR on the right to education, Mr. Vernor Muñoz Villalobos	13 - 21 February 2006
Guatemala	▪ SR on extrajudicial, summary or arbitrary executions, Mr. Philip Alston ▪ WG on enforced or involuntary disappearances, Chairperson: Mr. Santiago Corcuera	21 – 26 August 2006 19 - 21 September 2006
Honduras	▪ WG on arbitrary detention, Chairperson: Ms. Leila Zerrougui ▪ WG on mercenaries, Chairperson: Ms. Amada Benavides de Pérez	23 – 31 May 2006 21 – 25 August 2006
Hungary	▪ IE on minority issues, Ms. Gay J. McDougall	26 June - 3 July 2006

Indonesia	▪ SR on migrants, Mr. Jorge A. Bustamante	12 – 21 December 2006
Israel	▪ Joint visit to Lebanon and Israel by SR on summary executions, Mr. Philip Alston, RSG on internally displaced persons, Mr. Walter Kälin, SR on adequate housing, Mr. Miloon Kothari and SR on health, Mr. Paul Hunt	10 - 13 September 2006
Italy	▪ SR on racism, Mr. Doudou Diène	9 - 13 October 2006
Japan	▪ SR on the situation of human rights in the DPRK, Mr. Vitit Muntarbhorn	10 - 14 December 2006
Jordan	▪ SR on torture, Mr. Manfred Nowak	25 June - 29 June 2006
Kenya	▪ SR on indigenous persons, Mr. Rodolfo Stavenhagen	4 – 14 December 2006
Lebanon	▪ Joint visit to Lebanon and Israel by SR on summary executions, Mr. Philip Alston, RSG on internally displaced persons, Mr. Walter Kälin, SR on adequate housing, Mr. Miloon Kothari and SR on health, Mr. Paul Hunt ▪ SR on the right to food, Mr. Jean Ziegler	7 -10 September 2006 11 -15 September 2006
Liberia	▪ IE on the situation of human rights in Liberia, Ms. Charlotte Abaka	19 – 26 February 2006; 12 – 23 November 2006
Maldives	▪ SR on freedom of religion, Ms. Asma Jahangir	6 - 9 August 2006
Mongolia	▪ SR on the situation of human rights in the DPRK, Mr. Vitit Muntarbhorn	18– 23 December 2006
Morocco	▪ SR on the right to education, Mr. Vernor Muñoz Villalobos	27 November - 5 December 2006
Netherlands	▪ SR on violence against women, Ms. Yakin Ertürk	2 - 11 July 2006
Nicaragua	▪ WG on arbitrary detention, Chairperson: Ms. Leila Zerrougui	14 -23 May 2006
Oman	▪ SR on trafficking in persons, especially women and children, Ms. Sigma Huda	1 – 7 November 2006
Palestine & OPT	▪ SR on the situation of human rights in the Palestinian territories occupied since 1967, Mr. John Dugard	9 – 17 June 2006
Paraguay	▪ SR on torture, Mr. Manfred Nowak	22 - 29 November 2006
Qatar	▪ SR on trafficking in persons, especially women and children, Ms. Sigma Huda	8 -12 November 2006
Republic of Korea	▪ SR on migrants, Mr. Jorge A. Bustamante ▪ SR on the situation of human rights in the DPRK, Mr. Vitit Muntarbhorn	4 - 12 December 2006 14 – 18 December 2006
Russian Federation	▪ SR on racism, Mr. Doudou Diène	12 -17 June 2006
Spain	▪ SR on housing, Mr. Miloon Kothari	20 November - 1 December 2006

Sudan	<ul style="list-style-type: none"> ▪ SR on the situation of human rights in the Sudan, Ms. Sima Samar 	11 – 17 August 2006
Sweden	<ul style="list-style-type: none"> ▪ SR on the right to health, Mr. Paul Hunt ▪ SR on violence against women, Ms. Yakin Ertürk 	9 – 18 January 2006 12 – 21 June 2006
Switzerland	<ul style="list-style-type: none"> ▪ SR on racism, Mr. Doudou Diène 	9 -13 January 2006
Turkey	<ul style="list-style-type: none"> ▪ RSG on internally displaced persons, Mr. Walter Kälin ▪ SR on counter-terrorism, Mr. Martin Scheinin ▪ SR on violence against women, Ms. Yakin Ertürk 	22 - 25 February 2006 16 – 23 February 2006 22 – 31 May 2006
Ukraine	<ul style="list-style-type: none"> ▪ SR on sale of children, Mr. Juan Miguel Petit 	22 - 28 October 2006

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

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Australia

Introduction

During the period under review, the Special Rapporteur on adequate housing visited Australia from 31 July to 15 August 2006 (please refer to document A/HRC/4/18/Add.2).

126. In the light of the number of homeless people, the housing conditions in camps and indigenous communities, housing affordability and other issues described above, the Special Rapporteur has come to the conclusion that Australia has failed to implement its international legal obligation to progressively realize the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country. There is no national policy framework against which the outcomes of government programmes and strategies can be evaluated to assess to what extent Australian governments are progressively realizing this right. Current indicators from diverse sources show regressive results: reductions in public housing, soaring private rental rates, an acknowledged housing affordability crisis and no real reduction in the number of people who are homeless in Australia. In this context, while being conscious of the good practices that the Government has put in place to address some of the problems related to the implementation of the right to adequate housing, the Special Rapporteur would like to offer the following recommendations.

127. Australia should adopt a comprehensive and coordinated national housing policy, and develop a clear, consistent, long-term and holistic housing strategy that addresses structural problems, is efficient, and embodies an overarching human rights approach, with the primary task of meeting the needs of the most vulnerable groups.

128. All interested parties should be genuinely consulted in designing policies, strategies and planning in housing. To this end, the Government should engage in a constructive manner with the civil society and advocacy groups.

129. In view of the current housing crisis, the Commonwealth should consider creating a Ministry that focuses exclusively on housing.

130. Federal and state authorities should make bigger efforts to explicitly incorporate the wide range of international human rights instruments to which Australia is a party, into the domestic legal system. Domestic implementation could include constitutional guarantees for human rights, adoption of bill of rights in states, justiciability of human rights, and guaranteeing efficient complaint mechanisms. Particularly, there is a need to address discrimination, giving effective ways of implementation of legislation including providing a proactive role for states/territories in this regard.

131. The Special Rapporteur recommends that state/territory governments review residential tenancy laws in order to ensure compliance with international human rights standards, particularly with respect to guaranteeing minimum acceptable accommodation standards, and prohibition on forced evictions (The Special Rapporteur has developed a set of “Basic principles and guidelines on development-based evictions and displacement” - see A/HRC/4/18).

132. Australian governments should address homelessness and its causes as a priority. Moreover, laws that criminalize poverty and homelessness and those currently disproportionately impacting upon homeless people such as begging laws, public drinking laws and public space laws, should be revised and amended to ensure that fundamental human rights are protected.

133. Australian governments must urgently address the humanitarian tragedy of the lack of housing and basic services for the indigenous peoples of Australia, living on indigenous lands and elsewhere. To this end, the Special Rapporteur encourages relevant government staff to visit and reside in indigenous communities, including town camps, and rural and remote communities, in order to better comprehend the reality and the challenges faced by the populations and communities in these locations.

134. While the Special Rapporteur is satisfied that the Government is envisaging to enhance the funds for rural and remote communities indigenous housing and recognizing the urgency of it (see appendix, paragraph 11), this should not be done at the expense of indigenous Australians who live in urban areas, who also suffer inadequate housing and living conditions. The Special Rapporteur reminds the Government that retrogressive measures, such as cuts in expenditure on public housing or homelessness services, are permissible only in “exceptional circumstances”,⁸³ which is obviously not the case in Australia.⁸⁴

135. The Special Rapporteur also believes that indigenous peoples should be given a real participatory role and control to the greatest extent possible in their affairs, including through an independent, well resourced, national body representing all communities.

136. Australian governments need to ensure the availability of an adequate housing stock suitable for people with diverse housing needs, including culturally appropriate housing that diverges from European-style housing to accommodate communities with different cultural housing needs, as well as appropriate housing for people with disabilities. The Special Rapporteur suggests the adoption of legal provisions for new construction, both in public and private sectors, to include the necessary arrangements for enabling appropriate use and access by persons with diverse housing needs, rather than adapting and modifying already existing dwellings. This lack creates discrimination and barriers to social participation of these people.

137. The Special Rapporteur encourages the Government to develop and revitalize, in full cooperation with local communities, rural and remote areas with a view to diminishing the migration from rural to urban areas and easing the housing problems in cities.

138. Australian governments need to seriously reflect upon the current homeownership model and its possible negative impact on housing affordability and housing availability, including rental housing, particularly for middle and low-income Australians. This issue is affecting an increasing number of Australians, and intervention of the state in the market may be necessary.

139. The Special Rapporteur recommends that the Government promptly ratify and implement the Optional Protocol to CEDAW in order to strengthen the protection of women’s right to adequate housing.

140. The Special Rapporteur hopes that the Australian authorities will fully implement the recommendations on housing and land made to them by the various human rights bodies as soon as possible.

Azerbaijan

Introduction

During the period under consideration, the Special Rapporteur on freedom of religion or belief visited Azerbaijan from 26 February to 6 March 2006 (please refer to document A/HRC/4/21/Add.2).

92. The Government should primarily ensure that all individuals who may have been the victim of violations of their right to freedom of religion or belief or of other human rights because of their religion or belief receive appropriate redress, including through a judicial procedure. It should also ensure that the perpetrators of acts that have caused such violations are prosecuted according to applicable criminal procedures. Such measures should also be systematically enforced for any future acts of religious intolerance or other forms of persecutions of members of religious communities in accordance with the criminal laws of the country.

93. In particular, the Special Rapporteur urges the Government to give special attention to any form of religious intolerance towards religious minorities and take the appropriate measures to address and prosecute all forms of incitement to religious hatred in accordance with article 20 of the International Covenant on Civil and Political Rights and other relevant human rights provisions, including when these acts are perpetrated by the media.

94. Concerning the prerogatives that are exercised by the relevant State mechanisms with regard to religious groups and communities, the Government should generally reassess the level of control on the activities of those groups and communities in order to reach the right balance between a necessary regulation of religious activities in the society and the exercise of the right to freedom of religion or belief of all individuals living under Azerbaijan jurisdiction.

95. Concerning SCWRA, the Government should, as a priority, organize a system of training for persons who work directly or indirectly with the Committee on human rights in general and the right to freedom of religion or belief in particular. Moreover, it should define clear guidelines and objective criteria concerning the activities of staff members of SCWRA.

96. Regarding the registration of religious associations, the Government should first take the necessary measures so that the principle according to which registration does not constitute a precondition to the exercise of the right to freedom of religion, including the right to manifest one's own religion individually or in a group, is widely disseminated among the population as well as to the appropriate law enforcement agencies.

97. Moreover, the procedure of registration of religious associations should be more transparent, including regarding the timeframe of the process. In case of refusal of registration, the relevant institutions have an obligation to formally transmit to the community or group concerned the exact reasons for the refusal. Furthermore, the Government should ensure that these groups or communities have unimpeded access to the competent courts for a judicial review of the refusal.

98. The problem of religious material that propagates the perpetration of illegal activities should be addressed under the relevant laws in force in the country, and not be the object of scrutiny carried out in an arbitrary manner by the members of SCWRA. When the content of religious material is found by SCWRA to raise a concern in terms of its legality, the issue should be brought to the courts for a judicial review in accordance with applicable human rights and fair-trial standards.

99. The Government should ensure that religious communities are not unduly deprived of their places of worship. In cases where such deprivation is justified by lawful reasons and after judicial review, it provide the community concerned with a suitable alternative place of worship.

100. Concerning issues related to the clergy, the Special Rapporteur considers that the selection of imams should be made in a more transparent manner and that the Muslim communities concerned should be consulted in the selection process.

101. Regarding the right to conscientious objection, the Special Rapporteur urges the Government to honour its commitment made before the Council of Europe and to adopt legislation on alternative service in pursuance to the provisions of its own Constitution, which guarantees such a right.

102. With regard to the particular situation in Nakichevan, the Special Rapporteur is of the opinion that the local authorities should be further sensitized to human rights norms and democratic rules of Government. In particular, the Government should support the organization of training sessions in human rights and the right to freedom of religion or belief for all members of the local Government by relevant non-governmental or international organizations.

103. The Special Rapporteur was particularly encouraged by the interfaith engagement of religious leaders in Azerbaijan. She urges them to continue in this direction and to associate the other religious communities of the country in this initiative. Moreover, members of the civil society and women should also be associated with the dialogue so that it also takes a secular approach.

104. The Special Rapporteur encourages the creation of a dialogue or other form of interaction between representatives of religious minorities and editors or heads of electronic and print media in order to clarify misunderstandings and misconceptions about the purposes and beliefs of the communities concerned and to initiate a spirit of tolerance towards these communities among the population. Non-governmental organizations should assist and support religious minorities in arranging such dialogues.

105. The efforts to produce a curriculum for schools on the teaching of religions can be extremely useful in order to further strengthen the general level of religious tolerance that exists in Azerbaijan. It should be fully supported by all parts of the Government and shared with other countries that are looking for a model curriculum.

106. Finally, and in order to implement a number of these recommendations, the Special Rapporteur stresses the need for the Government to take all appropriate steps to strengthen the independence and neutrality of the judiciary.

Bahrain

Introduction

During the period under review, the Special Rapporteur on trafficking in persons, especially women and children visited Bahrain from 29 October to 1 November 2006 (please refer to document A/HRC/4/23/Add.2).

89. Bahrain, Oman and Qatar have, with varying degrees of commitment, recognized the existence of trafficking in persons within their borders. Various laws and measures to combat trafficking in persons and to provide for the protection of foreign migrant workers are in place and more are in the process of being elaborated. The respective Governments are, however, still falling short of fulfilling their international obligations to act with due diligence to prevent trafficking, prosecuting and punishing traffickers and to provide trafficked persons with the appropriate remedies and assistance.

90. Bahrain, Oman and Qatar are countries of destination for trafficking in persons for forced labour and sexual exploitation. The main victims are women and girls recruited as domestic workers and entertainers. Other workers, in particular men in the construction industry and in farm work, are also affected by this phenomenon albeit to a lesser extent. Recent legislation in Oman and Qatar concerning child camel jockeys has been effective in addressing the exploitation of children for this purpose. Close monitoring to completely bring an end to the trafficking of children for this purpose is nevertheless imperative.

91. The Special Rapporteur is particularly concerned with the sponsorship system and the climate of abuse and exploitation that this arrangement frequently engenders for migrant workers. Of further concern is the non-applicability of the respective Labour Codes and related laws to domestic workers. Access to justice for foreign migrant workers is inadequate since, for example, legal proceedings are extraordinarily lengthy and workers often have limited access to counsel and interpretation assistance.

92. More efforts are needed to clarify the concept of trafficking in persons to public officials with a view to ensuring that the current legislation is enforced. Sensitization of the general public is also essential in order to eradicate discriminatory attitudes and practices towards migrant workers.

93. The Special Rapporteur supports the adoption of the Gulf Cooperation Council Guiding Principles on combating trafficking and the stronger regional cooperation on trafficking in persons that this will encourage.

94. Finally, it is imperative that anti-trafficking and labour laws are respected and implemented and that decisions regarding violations of these laws are enforced.

95. The Special Rapporteur recommends that:

A. Prevention

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant ILO Conventions including Convention No. 97 (1949) on Migration for Employment, and No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers be ratified. Qatar should seriously consider ratifying the Palermo Protocol;

(b) Domestic legislation be meticulously brought in line with the Palermo Protocol and all elements in the trafficking definition be thoroughly reflected;

(c) Labour laws be amended with a view to making them also applicable to domestic workers;

(d) The sponsorship system be abolished and migrant workers allowed to more easily change their employers;

- (e) The relevant authorities inspect, in the presence of employers and workers, all migrant workers' contracts, including domestic workers and women who are brought in as entertainers, with a view to ensuring that conditions therein are not conducive to abuse and to ascertain that workers understand and willingly accept the conditions of their contracts. A translated copy of the contract in a language the worker understands should be obligatory;
- (f) Governments seek to establish bilateral and multilateral agreements and cooperation programmes with countries of origin and transit to prevent trafficking of persons, especially women and children, and cooperate on investigations, convictions and extradition of criminals. In this framework of cooperation, the Governments could hold regular meetings with foreign embassies to review developments and share information;
- (g) Governments seek the assistance and collaborate with specialized agencies including the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Organization for Migration and the International Labour Organization to obtain their expert advice on matters relevant to addressing the phenomenon of trafficking in persons, particularly on the human rights aspects of trafficked persons;
- (h) Whilst commending Bahrain for its progress in this area, Governments respect their international obligations in creating an enabling environment in which civil society may operate to contribute to the fight against trafficking and the promotion and protection of the human rights of trafficked persons;
- (i) All migrant workers receive an orientation session in the sending and receiving countries to inform them about their rights and obligations as employees and residents in the receiving countries, with special attention to the traditions and cultures of the host society;
- (j) Recruitment agencies be properly monitored in both sending and receiving countries. Registration of these agencies could be made mandatory and regular and unannounced official on-site inspections be carried out;
- (k) Relevant public officials and recruiting agencies be given training on the nature and existence of trafficking in persons, labour laws and the rights and freedoms of foreign migrant workers;
- (l) Oman adopt a national plan of action and establish an independent national coordinating mechanism to coordinate inter-governmental discussions and enact measures to combat trafficking in persons and provide for the protection of trafficked persons. Civil society, international organizations and the international community should be consulted in this process.

B. Protection

- (m) Screening and identification procedures of trafficked persons in detention centres be systematic. Alternative arrangements, other than deportation or detention centres, should be considered to safely house identified trafficked persons;
- (n) Foreign workers be guaranteed the right to an accessible and fair system of justice. Court fees, if at all, should be reasonable, proceedings should be dealt with urgently, interpretation services and legal aid provided and special attention be given to the needs of women and children. Working permits of migrant workers should not be suspended pending legal disputes and the right to find alternative employment during such proceedings should be allowed. The necessary protection of witnesses and trafficked persons, including the right to confidentiality, should be respected;
- (o) A comprehensive human rights framework providing for the promotion and protection of the human rights of trafficked persons be established and implemented with a view, inter alia, to encouraging trafficked persons to make formal complaints against their traffickers. The Governments should ensure that trafficked persons are provided with the necessary protection and assistance, including appropriate housing, legal assistance, medical, psychological and material assistance, the right to compensation for damages suffered, safe repatriation or social reintegration as desirable. States should respect their obligations of non-refoulement. Such protection and assistance should not be conditional to their acceptance to testify against the alleged traffickers;
- (p) Given that the right to privacy is restricted by mandatory HIV/AIDS testing, public health, criminal and anti-discrimination legislation should prohibit mandatory HIV/AIDS-testing of targeted groups, including migrant workers. When tests are carried out, confidentiality of results must be ensured;

- (q) Authorities ensure that embassies are systematically informed when their nationals are being detained, and visits by the relevant consular officials be facilitated. Sending countries should ensure that their embassies in the receiving States have the necessary resources to carry out such visits, follow up on the cases and provide any necessary assistance;
- (r) Mechanisms to monitor the working conditions and compliance of employment contracts of domestic workers in the households of their employers be established. Unannounced house visits and confidential interviews with domestic workers, including at the end of their probationary period, should be carried out;
- (s) Mechanisms to monitor the working conditions of migrant workers whose employment is regulated by the Labour Codes, as well as inspection of labour sites, including venues where foreign workers are employed at night, be more systematically and strictly applied. Non-registered labour camps should be shut down or made to register;
- (t) Special attention be paid to addressing the particular needs of women and children in the provision of protective measures. Such measures should not infringe on other rights and freedoms, including freedom of movement;
- (u) Migrant workers in detention centres be informed of the reasons of their arrest in a language they understand, be provided with legal assistance if requested, be allowed to make a local or international phone call and have access to their embassies;
- (v) Governments be extremely vigilant in ensuring that parents and guardians accompanying minors have not received payments or benefits to give their consent to allow minors under their care to be exploited. The best interest of the child should always guide the handling of such cases;
- (w) Special attention be paid to detecting minors crossing borders and passing as adults with falsified documents. In such cases, necessary steps should be taken to provide the minors concerned with the necessary protection and assistance, including safe repatriation or social reintegration if repatriation is not in the interest of the minor;
- (x) Bahrain no longer postpone the opening of the shelter identified for this purpose and encourages the Government to review the plans communicated to her to limit the migrant women's movement for their own protection. Alternative measures, such as being accompanied by social workers when leaving the shelter, could be envisaged. Oman should seriously consider establishing a shelter to provide trafficked persons with a place of refuge where they can obtain the necessary protection and assistance;
- (y) Current discussions in Oman on camel racing will result in raising the minimum age to 18. Moreover, in line with the recommendations of the Committee on the Rights of the Child, the Special Rapporteur calls on the Governments of Oman and Qatar to carry out unannounced inspections at camel races and breeding farms to ensure the proper implementation of the relevant laws.

C. Punishment

- (z) The Governments fulfil their international obligations in acting with due diligence to prevent, investigate and punish trafficking in persons in accordance with the provisions delineated in the Palermo Protocol;
- (aa) The Governments compile comprehensive statistics on investigations and prosecutions of trafficking-related offences disaggregated by the type of offence, gender and age of victim;
- (bb) In harmonizing national legislation with the Palermo Protocol, Bahrain and Oman ensure that all elements of trafficking in persons are defined as crimes;
- (cc) The Governments ensure that court decisions and penalties be promptly and strictly enforced. Decisions and sentences concerning human trafficking should be made public;
- (dd) The Governments enter into extradition agreements with neighbouring countries, including countries of origin and transit, to coordinate their efforts in combating human trafficking.

Belarus

Introduction

During the period under review, the Special Rapporteur on the situation of human rights in Belarus submitted a report to the Human Rights Council on Belarus (please refer to document A/HRC/4/16).

51. Before drawing any conclusion on the substance of the matter, the Special Rapporteur is obliged to address a number of issues which along the years have been the subject of allegations formulated not only by Belarus but also by several members of the Commission on Human Rights and later by members of the Human Rights Council, namely: (a) that the Special Rapporteur's mandate and his assessments are politically motivated; (b) that the Special Rapporteur's recommendations have an unacceptably political character which aim at regime change; (c) that the Special Rapporteur's approach is subjective and biased; and (d) that the Special Rapporteur has exceeded the limits of the mandate entrusted to him by the Commission/Council. On those issues the Special Rapporteur states the following:

(a) Individual and collective human rights are about power-sharing between the State and the citizens as well as between the political leadership and the society. That means that everything related to the protection and promotion of human rights is political. On the other hand, there is a clear and indestructible interrelationship between respect for human rights, the effectiveness of democratic mechanisms and the functioning of the rule of law. The nature of recognized and protected human rights, as well as the instruments for their protection are different in different countries in accordance with the differences between those countries' political regimes. While one should admit that respect for human rights might vary from one country or region to another as a result of variations in local cultural, social and historical backgrounds, one must admit that there is a minimal set of fundamental values having a universal character encompassing basic human rights which must be enhanced, respected and protected everywhere in the world. The violation of these basic universal rights is a matter of legitimate concern for the whole international community and legitimates the intervention of the whole international community. Such an intervention, which should take place in compliance with international law, has not only a moral basis but also a pragmatic and political explanation, since lack of respect for human rights generates social tensions and ultimately national and international insecurity;

(b) Whenever an incompatibility exists between the nature of a certain political regime and respect for universally recognized human rights, a change in the political behaviour of the respective regime must be recommended. The alternative would be the acceptance of the human rights violations and of their consequences in the security field. What must be stressed is that such a change should be foreseen and promoted only in a transparent way, with non-violent means and preferably within a multilateral framework. This is precisely what the Commission on Human Rights was doing by putting in place the country mandates;

(c) Since violations of human rights affect at the same time the real lives of human beings and international security, it is of paramount importance for everyone not only to assess the situation, but to act to change it for the better. To this end the mandate of a special rapporteur has no limits, any rapporteur being obliged to look at every single issue which might directly or indirectly touch upon the capacity to violate or, on the contrary, to restore respect for human rights;

(d) In the accomplishment of his mandate, the Special Rapporteur has encountered, for the third consecutive year, an absolute refusal to cooperate on the part of the Government of Belarus. All efforts made to engage in constructive dialogue were fruitless. The Special Rapporteur has consistently informed the Government of Belarus of all of his findings based on information received from different sources, requested their official assessment, and made it clear that silence would be interpreted as a confirmation of accuracy. The absence of any reaction implies that the Government of Belarus accepts the facts contained in this report.

52. The decision to establish a special procedure to monitor the situation of human rights in Belarus, taken in accordance with United Nations rules, must be accepted and enforced by all States Members of the United Nations. The systematic obstruction of United Nations special procedures in the fulfilment of their mandates violates the obligations which the Republic of Belarus has accepted as a Member State. The persistent

violation by Belarus of its obligations has been reiterated in resolution 61/175 of the General Assembly, in which the Assembly expressed deep concern about the failure of the Government of Belarus to cooperate fully with all the mechanisms of the Human Rights Council, and the failure to meet its commitments to hold free and fair elections. The Assembly insisted that the Government of Belarus cooperate fully with all the mechanisms of the Human Rights Council.

53. The conclusions reached by the Special Rapporteur in his second report (E/CN.4/2006/36) were fully confirmed during the third term of his mandate. The conclusions and recommendations contained in that report continue to be valid and should be considered an integral part of the present report. The Special Rapporteur firmly believes that the first responsibility for improving the dramatic situation of human rights in Belarus lies with the country's authorities. Therefore, while bearing in mind that all the recommendations addressed to the Belarusian authorities in his 2006 report were ignored, the Special Rapporteur stresses that they remain valid and must be reiterated even if there is no indication that this time they might be accepted and enhanced.

54. In parallel with the execution of the country mandate regarding Belarus, at least seven other special procedures mandate-holders - the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the torture and other cruel, inhuman and degrading treatment or punishment, the Special Representative of the Secretary-General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention - made assessments identical to those of the Special Rapporteur on the situation of human rights in Belarus and, concerned by their findings, addressed several urgent appeals to the Government of Belarus. Most of those appeals received no reply, and the few answers that were given were superficial. Thus, all major information having been thoroughly checked, all the concerned special procedures have converged towards the same opinion on the situation of human rights in Belarus.

55. At the same time, the opinions and assessments of the Special Rapporteur on the situation of human rights in Belarus were confirmed and fully shared by the most important European or Euro-Atlantic organizations, namely the OSCE, the OSCE Parliamentary Assembly, the Council of Europe, the Parliamentary Assembly of the Council of Europe, the European Council, the European Parliament, the European Commission and the NATO Parliamentary Assembly. It is impossible to believe that all these people are wrong or biased.

56. There are few States that support the current regime in Belarus. Their support could be explained by ideological or geopolitical reasons. Without such support the capacity of the Belarusian regime to continue its human rights violations would be drastically limited. Consequently, one may conclude that, to a large extent, respect for human rights in Belarus is a hostage of geopolitical controversies and that in this context, without the support of the Russian Federation the efforts of the international community to promote respect for human rights in Belarus will enjoy very limited success.

57. During 2006, the situation of human rights in Belarus constantly deteriorated. Over the last 1½ years, two negative developments worth mentioning were added to the Special Rapporteur's assessment: (a) an official State ideology essentially based on the former Soviet concepts was imposed to the citizens; (b) the ethnocultural diversity of the society, in fact unproblematic, was used as a means of dividing the people and thus diminished their capacity to resist State oppression. Although resistance against the political regime is steadily increasing (the intensity of protest rallies is developing very fast for the generally very calm character of the Belarusian society), important parts of the population appear politically passive and limit themselves to silent opposition. One could very well say that a large number of citizens patiently accept the current economic, social and political realities. An important explanation is the social safety net which is provided by the State to the obedient citizens. Since the unreformed economy of the country could not possibly produce enough financial resources to fund such a protectionist-paternalist social policy, the appropriate international institutions should investigate to determine if the funds thus used are the result of illicit international activities.

58. The Government of Belarus did not consider any of the recommendations made by the Special Rapporteur (E/CN.4/2006/36, para. 95). It continued to ignore the recommendations made by other special procedures, such as the Working Group on Arbitrary Detention (see E/CN.4/2005/6/Add.3), or by treaty bodies such as the Human Rights Committee. In fact, the political system of Belarus seems to be incompatible with the concept of human rights as enshrined in the Charter of the United Nations and in the international human rights instruments to which Belarus remains a party. Consequently, the Human Rights Council should either call for the democratization of the political regime and a change in the political behaviour of the Government or admit that Belarus' human rights record cannot be improved because the human rights violations are consistent with the political nature of the regime.

59. The present report demonstrates that Belarus does not respect its obligations under the international human rights instruments to which it has adhered. Therefore, based on Chapter II of the Charter, the Special Rapporteur reiterates his recommendation that the Security Council should adopt appropriate measures to ensure the respect by the Republic of Belarus of its legal obligations. The Republic of Belarus has also not complied with reporting obligations under the treaties it has ratified. Thus, outstanding reports were not forwarded respectively to the Committee on Economic, Social and Cultural Rights (due in 1999 and 2004); to the Human Rights Committee (due in 2001); to the Committee against Torture (due in 2000 and 2004); to the Committee on the Elimination of Discrimination against Women (due in September 2006); and to the Committee on the Rights of the Child under the Optional Protocol on the sale of children, child prostitution and child pornography (due in 2004).

60. As mentioned in his previous report, the Belarusian political opposition and civil society cooperated actively with the Special Rapporteur. The recommendations addressed to the Belarusian civil society and democratic forces were largely followed: democratic forces managed to unite themselves, not only with the objective of participating in the elections, but also to develop human rights and a democratic culture in Belarus and empower Belarusian society to defend these values. They should be encouraged and supported. However, recent developments show that this beneficial unity might be weakened by internal disputes and rivalries fuelled by, among other things, the frustrations induced by the general lack of progress in the democratization of the country. The international community - and especially the Human Rights Council - should call for the unity of democratic forces in Belarus to be maintained for the sake of the effectiveness of the efforts dedicated to the promotion and defence of human rights. While more political pluralism could be necessary within the democratic contest for political power, more unity is required as long as the actual priority is the defence of basic human rights, civil freedoms and democratic principles.

61. The Special Rapporteur notes that many of his recommendations addressed to the international community were not implemented, even though some positive steps are to be acknowledged. He would like once again to commend the European Union's efforts to promote human rights in Belarus, especially through the measures set out in the non-paper issued by the European Commissioner for External Relations and European Neighbourhood Policy on 21 November 2006. The Parliamentary Assemblies of the Council of Europe, OSCE, NATO and the European Parliament remained attentive to the situation of human rights in Belarus. The Special Rapporteur also wishes to highlight the support given to his mandate by Poland, the Czech Republic, Latvia, Lithuania and Estonia, and the important contribution of international NGOs to the promotion of human rights in Belarus. He considers nonetheless that these efforts are insufficient, and calls upon the international community to take concrete action towards the fulfilment of all recommendations addressed to it.

62. Under the given circumstances, the mobilization and the action of the international community are of paramount importance for the destiny of Belarus and of its people. Therefore, at least the following recommendations addressed to the international community are to be reiterated:

(a) The Human Rights Council should request the Office of the United Nations High Commissioner for Human Rights to immediately establish a group of legal experts to investigate whether senior officials of the Government of Belarus are responsible for the disappearance and murders of several politicians and

journalists and make concrete proposals for their prosecution, in order to bring to an end the impunity enjoyed by those involved in such crimes;

(b) An international fund for the promotion of human rights in Belarus should be established. Such a fund could finance in a coherent way comprehensive programmes for the development of the civil society, for democratic public education and for assistance to the human rights defenders who have been politically harassed, oppressed or prosecuted;

(c) The Human Rights Council should request the Office of the High Commissioner for Human Rights to join the efforts of other international organizations to organize an international conference on the situation of human rights in Belarus, involving the European Union, the Council of Europe, the OSCE, the Inter-Parliamentary Union and the Commonwealth of Independent States, as well as possibly the Government of Belarus and representatives of the civil society. The conference would provide a forum to discuss possible ways to improve the human rights situation in Belarus and prepare the ground for an open-ended national round table on the situation of human rights in Belarus, with the objective of defining a road map for the implementation of human rights reforms, as requested by the United Nations human rights special procedures and treaty bodies;

(d) The United Nations Secretary-General should adopt appropriate measures to investigate the apparent involvement of senior government officials in international organized crime and illegal arms sales, monitor the international financial cash flows of Belarus and, if necessary, freeze foreign bank accounts of those involved in illicit trafficking, and prosecute criminals;

(e) The Special Rapporteur welcomes the recommendation of the Parliamentary Assembly of the Council of Europe that the European Convention on Human Rights be amended in such a way as to open it for signature by Belarus even before the country meets the standards for becoming a member of the Council. That would allow Belarusian citizens to bring cases of human rights violations committed in their country before the European Court of Human Rights.

63. The Special Rapporteur would like to reiterate that Member States should be aware and should not ignore that present trading relations with Belarus do not grant a better quality of life to Belarusian citizens, but allow President Lukashenka's regime to remain in power by systematically violating human rights and threatening international security. Trade relations should be conditional upon the immediate adoption of democratic initiatives such as the organization of the proposed round table on the situation of human rights in Belarus. While the European Union and the United States of America should maintain travel restrictions for Belarusian officials, the Special Rapporteur recommends that all Member States, especially the Russian Federation and Ukraine, as neighbouring States, adopt similar measures. On the other hand, international travel for ordinary Belarusian citizens should be facilitated and a reduction of or even an exemption from visa fees would be much welcomed.

64. The mandate of the Special Rapporteur on the situation of human rights in Belarus gave a sign of international solidarity to Belarusian victims of human rights violations and to human rights defenders, further raised international awareness of the situation of human rights in Belarus, mobilized international support, and indicated clearly to Belarusian stakeholders what measures they are expected to take in order to ensure the compliance of Belarus with its international human rights and international law obligations as a dignified Member of the United Nations. Therefore, the Special Rapporteur reiterates his recommendation to the Human Rights Council to extend the mandate not only in time, but also in scope and means. This is the least the international democratic and civilized community can do to keep alive the hope that an improvement of the human rights record in Belarus is possible.

65. The United Nations bears a particular responsibility in supporting the implementation of the recommendations of special procedures. Member States should ensure that the ongoing reform of the human rights system translates that responsibility into concrete powers and adequate resources for the United Nations High Commissioner for Human Rights to enable her Office to act to provide stronger and more effective support for the special procedures. Cooperation between regional organizations and the United Nations, in particular the Human Rights Council and the Office of the High Commissioner, should be enhanced.

Burundi

Introduction

The Independent Expert on the human rights situation in Burundi visited the country from 29 May to 10 June and 7 to 14 October 2006 (please refer to document A/HRC/4/5).

To the Government of Burundi

78. The independent expert expresses concern about the threats against the families of the victims of the Muyinga massacre and deplores the failure to prosecute individuals implicated in the disappearance and summary execution of suspected FNL members held in military custody in the province of Muyinga between May and August 2006.

79. The independent expert commends the Government of Burundi for creating a judicial commission to look into this matter and recommends that the Government implement the findings of this commission and ensure that those responsible are sanctioned.

80. The independent expert welcomes the decision made by the Supreme Court of Burundi to release five detainees accused of preparing a coup against the Government of Burundi. The independent expert expresses concern at the condemnation of two of them and urges the judiciary to complete the preparation of the record of the trial speedily so that those convicted can file their appeal.

81. The independent expert urges the Government of Burundi to speed up the process of establishing the transitional justice mechanism in fulfilment of its international undertakings to this end.

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

83. The independent expert calls upon the Burundian authorities to take measures to deal with increasing incidents of sexual violence.

84. The independent expert calls upon the Government and FNL to implement the ceasefire agreement signed on 7 September 2006 as soon as possible.

85. The independent expert commends the Government of Burundi for the measures it has recently taken to provide an environment in which the media and the civil society can work with greater freedom.

To the international community

86. The independent expert commends the international community, particularly the Regional Initiative on Burundi, the Security Council, the African Union and the Executive Representative of the Secretary-General, for their efforts in assisting Burundi to attain and consolidate peace.

87. The independent expert commends the people of Burundi, the civil society in Burundi and the international community for their role in ensuring that justice was done in the case of those accused of attempted coup.

88. The independent expert calls upon the international community to increase its support for humanitarian and development assistance in order to deal with the famine crisis in the northern part of Burundi.

89. The independent expert urges the international community to support the Government of Burundi in the realization of the campaign against HIV/AIDS, priority development programmes and human rights.

90. The independent expert commends Maison Shalom for its work and its leadership, and calls upon the international community to support this initiative and through it the enjoyment of human rights by all Burundians who have been deprived of their dignity by the war and the slow pace of reconstruction and economic recovery.

91. The independent expert encourages the international community to increase its support for the Burundian justice system, in particular regarding the transitional justice mechanisms and the establishment of a National Human Rights Commission.

92. The independent expert urges the community of donors to release the funds pledged at the Paris, Geneva and Brussels conferences and recommends that the international community support the efforts of the Government of Burundi to encourage respect for and promotion of human rights and to secure lasting peace.

93. The independent expert encourages the Peace Building Commission to continue supporting the Government of Burundi in disbursing the necessary funds to implement the development plan for 2007-2008.

94. The independent expert welcomes the establishment of BINUB, and commends the international community and civil society for their role in the protection and promotion of human rights and encourages them to strengthen their cooperation in this regard.

95. He urges the international community to press the Government of Burundi to complete investigation regarding the Gatumba massacre and to prosecute the perpetrators of the massacre.

96. The independent expert calls upon the international community to urge the Government to desist from taking measures, which may destabilize Burundi.

Cambodia

Introduction

During the period under review, the Special Representative of the Secretary-General for human rights in Cambodia visited the country from 19 to 28 March 2006 (please refer to document A/HRC/4/36).

106. As deliberate and systemic violations of human rights have become central to the Government's hold over power, the international community, bound by obligations in the Paris peace agreements, should do all it can to persuade and press the Government to respect its human rights commitments under the agreements, international human rights treaties and the Constitution of Cambodia. The Government on its part must declare unequivocally to the international community and to the people of Cambodia its obligations, legal and moral, to stop the abuse of rights and to respect the independence of the judiciary and prosecutorial authorities.

107. The Special Representative reiterates his invitation to the Government to inform the Human Rights Council about the concrete measures that it has taken and that it intends to take to respond to the recommendations that he and his predecessors have made, and to the recommendations of the treaty bodies and the international community through resolutions of the General Assembly and the Commission on Human Rights.

108. The recommendations that follow include previous recommendations not addressed in the body of this report. Together, they can be seen as constituting the minimal elements of a plan of action for human rights in Cambodia:

The rule of law and protection of human rights and fundamental freedoms

- Adopt measures, as a matter of priority, to ensure the independence, impartiality and effectiveness of the Constitutional Council, the Supreme Council of the Magistracy and the judicial system as a whole; and allow citizens effective access to these institutions to enforce their rights;
- Finalize, enact and implement the laws and codes that are essential components of the rule of law in accordance with the Constitution and international instruments;
- Uphold the right of all Cambodian citizens to undertake activities to promote and protect human rights and fundamental freedoms by ensuring full respect for the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;
- Fully protect freedoms of expression, peaceful assembly, and association in accordance with the Constitution and international instruments. Ensure that any new legislation complies with these instruments. Repeal provisions in the law on defamation, disinformation and incitement. Ensure access to information held by public authorities;
- Ensure that law enforcement officials disperse demonstrations and gatherings only if absolutely necessary. Use force only as a last resort, in proportion to the threat posed, with minimum damage or injury to persons and property;
- End forced evictions;
- Conduct impartial and credible investigations into grave violations of human rights, past and present. Bring to justice those responsible. The murder of trade union leader, Chea Vichea, is a case in point;
- Establish an independent commission to investigate complaints concerning military or police conduct;
- End forced confessions as evidence in trials. Institute a system of regular visits of NGOs to police cells and detention centres to prevent torture and cruel, inhuman and degrading treatment or punishment. Complete ratification of the Optional Protocol to the Convention against Torture and implement its provisions;

- Review sentencing policies. Introduce non-custodial options as an alternative to imprisonment, first and foremost for children;
- Ensure that lawyers, family members and human rights organizations have regular access to prisoners and detainees.

Access to land and livelihoods

- Make publicly available details of all approved concessions, including contracts, maps and information about concession companies and their shareholders;
- Enforce the requirement to undertake public consultations and meaningful environmental social impact assessments prior to granting economic land concessions. Concessions granted without these requirements being fulfilled should be null and void;
- Cancel concessions that do not comply with the requirements of the Land Law and its sub-decrees. Provide a mechanism for affected communities to request the review and cancellation of non-compliant concessions;
- Ban the granting of economic land concessions and other concessions in areas of primary forest;
- Ban the sale of land and the granting of economic land and other concessions in areas occupied by indigenous communities, pending the registration of indigenous claims over traditional lands and the collective titling process;
- Put in place mechanisms to protect indigenous land pending the registration of collective title, and finalize the process of registration of collective title over indigenous land;
- Protect the rights of NGOs and community activists to advocate for equitable access to land and natural resources, without threats, intimidation or restriction of their activities. The legal system must not be used to silence or punish activists.

Adherence to International Instruments

- Ratify the Optional Protocols to the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women;
- Accede to the United Nations Convention against Corruption. Bring the draft Anti-Corruption Law into conformity with its provisions;
- Submit as a matter of priority Cambodia's initial report on its compliance with the International Covenant on Economic, Social and Cultural Rights;
- Fully uphold and comply with the 1951 Convention on the Status of Refugees and its 1967 Protocol.

Colombia

Introduction

During the period under consideration, the Representative of the Secretary-General on internally displaced persons visited Colombia from 15 to 28 June 2006 (please refer to document A/HRC/4/38/Add.3)

71. As noted in the introduction, the Representative commends the Government of Colombia for having a far-reaching legislation and policy on IDPs, as well as the efforts that have gone into responding to the humanitarian needs of the IDPs. This legislation, as well as the institutional architecture put into place, combined with the tradition of checks and balances in the form of the Constitutional Court, the *Defensoría*, the *Procuraduría* and the *Fiscalía*, and a vibrant and articulate civil society are very good bases for the attention and protection of IDPs. However, the dynamics of the conflicts in Colombia and the scale of displacement show that these mechanisms in and of themselves are not sufficient to address the problem of the IDPs. The rate of internal displacement has been declining in recent years. However with the accumulation, the number of internally displaced continues to rise. The Government faces an increasing dual challenge of continued new needs, and a growing amount of people who will need sustainable solutions, once they can be envisaged.

72. The Representative remains perturbed by the clear gap between the policies decided in the capital Bogotá and what is effectively implemented at the departmental and municipal level. He was struck by what seems to be a disconnection between the policy formulation at a national level and the operational implementation at the local level. He concludes that their lack of consistent and coherent implementation affects the capacities of IDPs to effectively exercise their rights.

73. Concerning the implementation of the policy on IDPs, the Representative recommends:

- (a) Continuing to build on the excellent Law No. 387 and, at the same time, adopt the measures recommended below;
- (b) Developing, as requested by Constitutional Court decision T 025/04 and subsequent Court orders 176, 177 and 178 of August 2005, and reaffirmed in Auto 218 of August 2006, qualitative benchmarks and indicators for that would give civil servants at the regional and municipal levels the impetus to operationalize the State's IDP policy;
- (c) To provide the necessary means for the implementation of the policy and to make, as a matter of priority, additional budget allocations, especially to strengthen the support to the mechanisms entrusted with protecting the human rights of internally displaced persons.

74. Concerning the gap between the policy level in Bogotá and the operationalization and implementation at departmental and municipal levels, the Representative recommends:

- (a) Streamlining of the existing structures and procedures;
- (b) Providing the local authorities with higher degree of decentralization and with the economic and administrative resources to take decisions and to implement national policies more expediently and effectively; and giving clearer guidance on how to implement the national directives;
- (c) Better oversight from national level headquarters regarding attitudes and behaviour, at the level of execution, towards the beneficiaries and rights-holders, as well as monitoring the implementation of the benchmarks;
- (d) Enhanced training for the municipal authorities on how to implement the national IDP policy at their level, as well as giving them the necessary tools to do so.

75. Concerning the prevention of displacement, the Representative recommends to:

- (a) Include a broader notion of the “protection of civilians” or “protection of communities at risk” as a criterion when assessing the risk potential of a situation;

- (b) Include the *Defensoría*, as main author of the risk assessment reports, in the CIAT deliberations on early warning recommendations, in accordance with its constitutional mandate;
- (c) Better graduate responses to the early warning reports, that would allow for action (and the release of resources), without requiring a full-fledged early alert action;
- (d) Use a participatory approach which would allow for consultations with the populations concerned on what they perceive as the best means of protection for them.

76. Concerning the persistent, multiple causes of displacement, the Representative recommends:

- (a) To all armed actors,
 - (i) Respect for all their obligations under international humanitarian law; in particular the inherent military neutrality of the civilians and to refrain from pressuring them;
 - (ii) Not to unnecessarily jeopardize the security of the civilians by violating the principle of distinction and by using civilian installations for military purposes;
 - (iii) Respect for the wishes and policies adopted by communities who want to remain neutral in the armed conflict, as a means of protecting themselves against violence;
- (b) To the Government,
 - (i) A participatory approach, taking into account the best interests of the populations affected, when deciding on the means to use when combating illicit cultivations;
 - (ii) The inclusion of displacement caused by natural disasters in order to avoid differing humanitarian and structural responses.

77. Concerning access and registration to the unified registration system (SUR), the Representative recommends:

- (a) Within the broad framework allowed for in article 1 of Law No. 387, the inclusion of actions causing forced displacement by any armed actor for whatever reason as a factor for eligibility of IDP status;
- (b) The inclusion of cases of multiple displacement within the same urban area or *corregimiento*, or within the same reservation or collective land in the case of indigenous populations or Afro-Colombian communities;
- (c) The inclusion of displacement due to natural disasters in order to avoid different humanitarian and structural responses depending on the source of displacement;
- (d) A clear directive to the departmental and local levels of administration that internally displaced should be given the benefit of doubt in cases where such doubt exists;
- (e) Clear directives to the civil servants and information to the people who have been forced to be displaced repeatedly, that they are allowed to re-register in SUR and to receive humanitarian assistance again if their circumstances so require;
- (f) Clear information made available, through brochures or other means, on what the registration in SUR entails as well as its benefits and what other options exist for indigent people, should they not be recognized as internally displaced.

78. Concerning the delivery of humanitarian assistance, the Representative recommends:

- (a) To find means to speed up the registration process or to provide some form of interim assistance in cases that are not manifestly ill-founded, as well as to take measures such as provisions and contingency planning instead of reactive actions, in order to shorten time until State assistance can be delivered;
- (b) A participatory approach with IDPs themselves to determine what they consider as their most pressing needs;
- (c) A differentiated approach to assistance provided to persons and communities with specific needs such as large families, the elderly, and indigenous and Afro-Colombian communities;
- (d) Granting of renewed assistance to victims of inter- and intra-urban displacement even if they have already received assistance after their original displacement.

79. Regarding measures to consolidate and stabilize the socio-economic conditions of IDPs, the Representative recommends:

- (a) Examining ways to combine humanitarian assistance with quasi-simultaneous development oriented approach to find medium- and longer term solutions;
- (b) Working with municipal authorities to grant security of tenure for IDPs and basic infrastructure, and giving IDPs access to building materials;
- (c) Microprojects or microcredits to allow for retrained IDPs to make use of their newly gained skills;
- (d) Expanding already existing flexible microcredit programmes and devising new loans systems with the State as guarantor;
- (e) Foreseeing the means that IDPs are not crippled by debt through back-taxes or utility bills accrued during their displacement;
- (f) Ensuring that returnees receive specific support to rebuild as well as the means to carry them over until they become productive again.

80. Concerning the land issues, the Representative recommends that:

- (a) The question of the registration of land titles be declared a priority and that the outstanding registration of land entitlements, both for IDPs and for communities at risk, be undertaken without further delay;
- (b) Measures be adopted to facilitate the regularization of land titles, taking into account that a great number of the internally displaced were subsistence farmers who either never had land titles, having built their farms from scratch, or while having legal documents of sale, never registered their property titles formally; such measures should contemplate the cancellation of debts due to outstanding tax payments accrued during displacement;
- (c) The property preservation efforts undertaken by *Acción social* be expanded together with the necessary resources. In this context, local authorities, both at departmental and municipal levels, should be required to cooperate and to help with the identification of the properties that have been abandoned by forcibly displaced owners;
- (d) As regards collective land titles of the indigenous and Afro-Colombian communities, the authorities declare invalid the titles issued for parts of collective land sold by individuals out of collective property;
- (e) All land titles acquired under duress be declared invalid and that the authorities ensure that the provisions barring these lands from transactions are enforced;
- (f) The *Fiscalia* dictate provisional measures based on the cross-referencing of the reports of the internally displaced, the confessions of land seizure by the people hoping to benefit from the Justice and Peace Law;
- (g) The necessary legislative measure (Presidential decree) be taken to allow for direct restitution of properties to the victims of forced displacement, instead of going through a General Reparation Fund linked to the National Commission on Reparation and Restitution, and that legal titles be established, while acknowledging that the titles in and of themselves are not sufficient, since the owners need to be in a condition to return and have the effective usufruct of their land;
- (h) To compel with the recent Constitutional Court Decision on the Law on Justice and Peace, people who want to benefit from it disclose the whole truth, also about the displacements they have enforced and the lands and properties they seized during their activities, and the persons to whom they passed them on if they did not acquire them for themselves.

81. Concerning the prosecution of the crime of forced displacement under Colombian law, the Representative recommends to:

- (a) The Fiscal general to draw up a full inventory of the criminal proceedings that exist to date for the crime of forced displacement; and to prosecute this crime independently of other possible crimes and human rights violations, instead of considering it as an accessory fact or a simple consequence of armed conflict;
- (b) The Government to ensure that the right to full reparation of IDPs is not linked to their registration in SUR.

82. Concerning the particular situation of women, the Representative recommends:

- (a) The systematic study and analysis of sexual and gender-based violence issues for internally displaced women and girl-children in order to render them visible;

(b) The implementation of a comprehensive policy for IDP women, taking into account their heightened state of vulnerability, as regards domestic and other forms of sexual or gender-based violence.

83. Concerning elderly people, the Representative recommends the adoption of special measures to take into account the particular health and assistance needs of elderly persons, including those who have to take care of children left with them by their parents.

84. Concerning indigenous, Afro-Colombian communities and other groups with heightened vulnerability, the Representative recommends:

(a) The implementation of the existing 2003 policy for assistance to indigenous persons and communities, as well as the institutionalized consultation of the National Commission for the Human Rights of Indigenous Persons and Communities as regards policies and measures for displaced indigenous persons or communities at risk;

(b) The implementation of a comprehensive policy for differentiated assistance to indigenous and Afro-Colombian communities and individuals that takes into account the cultural traditions, the leadership structures and collective character of such communities;

(c) The adoption and full implementation of effective measures to stop encroachments on or to ensure restitution of their land; as well as the increasing use of indigenous reservations for military and other purposes;

(d) The creation of channels and mechanisms to engage these groups of people with heightened vulnerability in consultations and have them participate in determining solutions and assistance for their needs.

85. Concerning the existing checks and balances in Colombia, the Representative recommends to the Government of Colombia:

(a) To keep and to strengthen the possibility for IDPs to submit *tutela* actions to the Constitutional Court, and to fully implement the decisions of the Court in this regard;

(b) To support the *Defensoria* in its work for IDPs and, in particular, to maintain, to expand and to strengthen the system of community defenders (*defensores comunitarios*) and to finance them, to the extent possible, through the national budget in recognition of the State's duty to protect the human rights of everyone and in particular of communities at risk;

(c) To fully respect, to adhere to and to implement the precautionary and preliminary measures issued by the Inter-American human rights system;

(d) To publicly support human rights and IDP defenders as an acknowledgement of their important contribution to a democratic and pluralistic society.

86. Concerning the role of the international community, the Representative recommends:

(a) To United Nations agencies,

(i) To continue to implement the recommendations of the IASC Mission and to produce the necessary time frames and benchmarks, as well as a common methodology and referral system for protection cases, in order to ensure a nationwide coverage and, in this regard, to clearly define the respective roles of UNHCR and OHCHR;

(ii) To assist the Government of Colombia in finding creative ways of engaging in humanitarian activities with a long-term perspective that would enable the socio-economic stabilization of IDPs, even during their displacement and not just during their return;

(iii) To assist the Government of Colombia in helping IDPs who are returning.

(b) To the donors,

(i) To acknowledge that the displacement problem in Colombia is of such a magnitude as to surpass even the economic possibilities of a relatively well-developed country;

(ii) To continue to support the Government of Colombia in its efforts for ensuring a global coverage of the humanitarian needs of IDPs;

- (iii) To better coordinate their policies with regard to humanitarian assistance for IDPs, on the one hand, and support for the fight against drugs and drug-trafficking, on the other hand;
- (iv) To devise means to support the Government of Colombia in its socio-economic stabilization efforts for IDPs, while they are still displaced and after their displacement;
- (v) To continue to advocate for a negotiated peace instead of prolonged hostilities that continue to produce forced displacement emptying whole swaths of the country.

Cote d'Ivoire

Introduction

During the period under consideration, the Representative of the Secretary-General on internally displaced persons visited Cote d'Ivoire from 17 to 25 April 2006 (please refer to document A/HRC/4/38/Add.2).

63. Although the crisis facing Côte d'Ivoire may not be a classic humanitarian crisis, the Representative of the Secretary-General considers that the people displaced by the war or the conflicts over land in the west of the country are in urgent need of assistance. He calls on the government authorities and all parties concerned to assume their responsibilities, in accordance with their obligations under international human rights law and humanitarian law, with a view to finding just and lasting solutions to the problems faced by internally displaced persons in Côte d'Ivoire.

64. The Representative of the Secretary-General encourages the parties concerned to pursue, with the help of the international community, efforts to find a political solution to the Ivorian crisis and invites all the actors involved to take into account the issue of displaced persons in this process and to come up with solutions that safeguard their rights.

65. The Representative of the Secretary-General welcomes the fact that displaced persons in Côte d'Ivoire are taken in for the most part by host families, which demonstrates the solidarity of the Ivorian people. However, he notes that this situation makes it difficult to identify displaced persons, and may thus hamper efforts to provide them with assistance and support. Moreover, after three years of conflict, the Representative of the Secretary-General has observed a certain fatigue affecting host families.

66. The Representative of the Secretary-General believes that a proper policy on displaced persons that takes into account all phases of displacement needs to be implemented as a matter of urgency, and that a plan of action should be adopted to that end.

67. The Representative of the Secretary-General recommends that the government authorities should:

(a) Draw up a political strategy and national plan of action on internal displacement that are in conformity with the Guiding Principles on Internal Displacement and that cover all categories of displaced persons without discrimination. This policy and plan of action should cover all phases of displacement, from preventive measures to the return and reintegration of displaced persons. The strategy should be drawn up in agreement with all the actors concerned, including displaced persons themselves, and should clearly set out institutional and administrative responsibilities. If necessary, the adoption of legislative measures in line with the Guiding Principles should be considered as a way of ensuring the implementation of the strategy. The implementation of the plan of action should go hand-in-hand with the mobilization of the resources needed to meet the needs identified;

(b) Establish a mechanism to coordinate the work of the various institutions dealing with displacement-related issues, which could also serve as a focal point for, and interface with, the international community;

(c) Cooperate with the international community in efforts to protect the rights of displaced persons;

(d) Act as quickly as possible to identify displaced persons and assess their needs, to produce an overview of their situation and enable the appropriate policies to be adopted. In particular, the Representative of the Secretary-General suggests that a study should be made of the displaced population in the north and east of the country, to complement the study carried out by government authorities in cooperation with the United Nations Population Fund (UNFPA);

(e) Take the appropriate steps to ensure the safety of displaced persons, particularly in the west of the country, by assigning the necessary military personnel to the task, making sure that those responsible for violating the rights of displaced persons are brought to justice, and helping those displaced persons who so wish to settle, even temporarily, in areas where their safety can be guaranteed. A particular effort should be made at harvest

time, as experience has shown that many attacks on individuals and property take place at this time. Illegal roadblocks should be dismantled as quickly as possible;

(f) Ensure that displaced persons have access to humanitarian assistance, particularly health care and education services, without discrimination. The authorities are encouraged to give priority, as far as possible, to displaced persons when allocating budget resources, to guarantee the safety of humanitarian workers and to consider adopting provisional measures, particularly for individuals without identity papers and children without birth certificates;

(g) Take the necessary steps to help internally displaced persons to recover their property and possessions, or compensate them appropriately. The process of adopting and implementing the law on compensation for war victims, in accordance with the Guiding Principles, should be speeded up, so as to provide a legal framework for such compensation. In addition, information campaigns should be organized to publicize the measures taken to facilitate the return of property;

(h) Ensure the full participation of displaced persons at every stage of the electoral process now under way, including by making a concerted effort to identify people. The attention of the Independent Electoral Commission should be drawn to this question;

(i) Pay special attention, as a matter of urgency, to the land issue, particularly in the west and south of the country. In addition to legislative steps, information campaigns on, for example, ways to resolve conflicts over property should be organized;

(j) Pay particular attention to the situation of women and children, who are a particularly vulnerable group within the displaced population, on the basis of, among other things, the UNHCR May 2003 guidelines for the prevention of and response to sexual and gender-based violence against refugees, returnees and internally displaced persons;

(k) Organize campaigns to raise awareness of the human rights of internally displaced persons, and provide training in those rights for, in particular, the defence and security forces and local authorities, on the basis of the Guiding Principles on Internal Displacement;

(l) Facilitate, in cooperation with the international community, the return, in safety and with dignity, of displaced persons who so wish to their home area.

68. The Representative of the Secretary-General recommends that the Forces Nouvelles should:

(a) Take steps to identify the displaced persons and/or returnees in the areas under their control;

(b) Take the necessary measures to create a climate conducive to the return of displaced persons to the areas under their control. In this respect, the Representative of the Secretary-General encourages the Forces Nouvelles to take the necessary measures to return the property belonging to displaced persons. A campaign to inform displaced persons about the measures taken could be organized in cooperation with the Ministry of Solidarity and with international partners.

69. The Representative of the Secretary-General recommends that the United Nations, humanitarian and development organizations and donors should:

(a) Support the government authorities in formulating and implementing a political strategy and plan of action to address the needs of displaced persons from both a humanitarian and a human rights perspective;

(b) Strengthen protection activities for displaced persons, particularly in the context of the mandate of the Office of the United Nations High Commissioner for Refugees in the field of protection, by strengthening the protection network and establishing an office of the UNOCI Human Rights Division in San-Pédro and in Tabou;

(c) Take the appropriate steps to improve the physical safety of displaced persons, particularly in the zone of confidence, by deploying more personnel. A

broadening of the mandate of UNOCI should also be considered;

(d) Improve coordination between humanitarian organizations in order to respond in a more comprehensive and effective way to the identified needs of displaced persons, and particularly the most vulnerable among them, including those lodging with host families;

(e) Provide suitable financial support for protection and humanitarian assistance for the most vulnerable categories of displaced persons;

(f) Provide substantial support for efforts to find a lasting solution to conflicts over land.

70. Lastly, the Representative of the Secretary-General calls on the Government, the United Nations and all donors to cooperate with civil society organizations working on internal displacement issues and with displaced persons themselves, to ensure that their voices can be heard.

Cuba

Introduction

During the period the period under review, the Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba presented a report to the Human Rights Council (please refer to document A/HRC/4/12).

35. The Personal Representative of the High Commissioner for Human Rights recommends that the Government of Cuba should take the following measures:

- (a) Halt the prosecution of citizens who are exercising the rights guaranteed under articles 18, 19, 20, 21 and 22 of the Universal Declaration of Human Rights;
- (b) Release detained persons who have not committed acts of violence against individuals and property;
- (c) Review laws which lead to criminal prosecutions of persons exercising their freedom of expression, demonstration, assembly and association, and in particular Act No. 88 and article 91 of the Criminal Code, in order to bring these provisions of the law into line with the above-mentioned provisions of the Universal Declaration of Human Rights;
- (d) Uphold, without exceptions, the moratorium on the application of the death penalty introduced in 2000, with a view to the abolition of the death penalty;
- (e) Reform the rules of criminal procedure to bring them into line with the requirements of articles 10 and 11 of the Universal Declaration of Human Rights;
- (f) Establish a standing independent body with the function of receiving complaints from persons claiming that their fundamental rights have been violated;
- (g) Review the regulations relating to travel into and out of Cuba in order to guarantee freedom of movement as defined in article 13 of the Universal Declaration of Human Rights;
- (h) Authorize non-governmental organizations to enter Cuba;
- (i) Foster pluralism in respect of associations, trade unions, organs of the press and political parties in Cuba;
- (j) Accede to the International Covenant on Civil and Political Rights and its optional protocols and the International Covenant on Economic, Social and Cultural Rights.

Democratic Republic of the Congo

Introduction

During the period under review, the Independent Expert on the situation of human rights in the Democratic Republic of the Congo submitted a report to the Human Rights Council (please refer to document A/HRC/4/7).

66. The independent expert recommends to all the Congolese parties, whether or not signatories to the Global and All-Inclusive Agreement, that they should:

- Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration, national unity and patriotism;
- Recognize the need for all political actors and the media to foster the culture of dialogue and rejection of violence and ethnic hatred; accept the democratic process, the verdict of the ballot box and recourse where necessary to legal remedies.

67. The independent expert recommends to the new Government that it should:

- Take all necessary measures to affirm and consolidate the State's authority over the entire territory and foster rapprochement and a spirit of dialogue among the political actors;
- Implement national vetting procedures by suspending members of the FARDC forces, the Congolese National Police (PNC) or the National Intelligence Agency (ANR), allegedly responsible for human rights violations, so as to restore confidence in the country's institutions;
- Provide all necessary support to the "Mapping Team", in order to draw up an objective cartography of the human rights violations committed between March 1993 and June 2003;
- Ensure effective application of the principle of clear separation between *intuitu personae* and *intuitu materiae* areas of jurisdiction between civilian and military courts;
- Ensure the effective integration, reunification, reinforcement and equipment of the army and police;
- Improve the currently precarious and inadequate physical, intellectual and equipment conditions of institutions and employees of the State, especially the judiciary, so that it can respond effectively to the requirements of justice and the fight against impunity;
- Combat the trafficking and illegal exploitation of natural resources;
- Combat all the crimes that continue to be committed, particularly sexual violence against women and children;
- Combat the continuing use of children for war; combat militias and privately armed groups and prevent them from rearming;
- Combat the impunity that serves to perpetuate violations of human rights and international humanitarian law;
- Work to enhance the status of women, protect them and help them to fulfil their potential; promote the rights of the child.

68. The expert recommends to the newly elected Parliament that:

- It adopt laws essential for the administration of justice and other areas of national life, including:
 - (a) Law on the organization and functioning of the Higher Council of the Judiciary (Conseil supérieur de la magistrature);
 - (b) Law providing for the application of the Rome Statute of the International Criminal Court;
 - (c) Law on the protection of persons living with HIV/AIDS;
 - (d) Framework Law on the organization and functioning of the new national human rights institution;
 - (e) Framework Law prescribing the organization and functioning of the national police;
 - (f) Law criminalizing torture;
 - (g) Law reforming prison administration;

- (h) Law on the integration of the army and reform of the security forces;
- (i) Harmonization of the provisions of certain legal instruments, particularly certain provisions of the Military Penal Code, with the requirements of the Constitution.

69. At the international level, the independent expert recommends that:

(a) The international community should:

- Support the new institutions arising out of the elections in order to permit the establishment of the rule of law, a culture of lasting peace, and democracy;
- Support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police;
- Support the renewal of MONUC's mandate to enable it to provide broader and greater mentoring and support to the new Government, the army and the national police, so that they may meet the various challenges posed by the constant crime and unrest within the country, particularly on its eastern borders;
- Assist the integrated human rights presence in the Democratic Republic of the Congo, consisting of the field office of the Office of the High Commissioner for Human Rights and MONUC's Human Rights Division, in implementing its programmes and activities for the promotion and protection of human rights;
- Provide all necessary assistance to enable the independent expert to fulfil his complex mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate;

(b) The Human Rights Council and, through it, the General Assembly, the Security Council and the Economic and Social Council should:

- Given the destitution of the judicial system in the Democratic Republic of the Congo and the scale and gravity of the crimes being perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002 and all subsequent crimes.

Ecuador

Introduction

During the period under review, the Working Group on arbitrary detention, the Special Rapporteur on indigenous people and the Working Group on Mercenaries visited Ecuador.

The Working Group on Arbitrary Detention visited Ecuador from 13 to 23 February 2006 (please refer to document A/HRC/4/40/Add.2).

In the light of its observations, the Working Group proposes that the Government of Ecuador consider the following recommendations:

(a) The judiciary should be provided with the necessary funding to ensure an appropriate administration of justice. Additional funding should be given to police and penitentiary institutions to improve urgently the conditions of detention at police stations, pretrial detention centres and social rehabilitation centres. The prison system should no longer be run by the Ministry of Internal Affairs; it should be administratively autonomous and self-financing. The use of torture and ill-treatment of detainees must be eliminated, in particular during the initial phases of the investigation, and detainees must be provided with the conditions required to prepare and ensure their defence and to maintain proper contact with their defenders;

(b) Serious consideration should be given to repealing the provisions contained in Act No. 2003-101 which established *detención en firme*. The principles and norms enshrined in international instruments and the Constitution should prompt a review of the current legislation and the drawing up of new laws on the public defence system and the enforcement of sentences;

(c) Urgent measures must be adopted to establish a system of public defenders in the country, placing the defence on an equal footing with the Public Prosecutor's Office and furnishing it with the necessary resources. Detainees should be brought personally before the judge within 24 hours of arrest and must be provided with the assistance of an attorney from the very beginning of their detention. The criminal and administrative liability of officials who do not observe constitutional rules must be established, with the necessary enforcement;

(d) Urgent measures should be adopted to end the systematic and abusive delegation of the duties of the Public Prosecutor's Office to the Judicial Police and to set in place the necessary safeguards and oversight. The necessary penalties should be established for prosecutors who delegate their duties abusively;

(e) Urgent measures appear necessary to ensure that any violation of detainees' human rights is immediately and properly investigated and that any official or employee found responsible is subject to the jurisdiction of the ordinary courts, and not the special parallel system of justice for the military and police;

(f) The overcrowding in police cells, pretrial detention centres and social rehabilitation centres must be appropriately remedied, in particular by making use of alternative measures to detention and by avoiding the placement of pretrial detainees in police cells;

(g) Special attention should be paid to the situation of children in conflict with the law. The practice of holding minors together with adults in police cells and at pretrial detention centres should be avoided. Any claims by detainees that they are minors must be responded to immediately, and such persons should be placed under the authority of the Prosecutor for Juvenile Offenders. It should be recalled that the pretrial detention of minors must be used only exceptionally and as a last resort;

(h) The Government and public policies should be inspired by the principles and norms contained in the Constitution and international human rights instruments ratified by Ecuador and in the national human rights plan. The human rights of detainees must be respected, even in situations in which there is public pressure or calls by the media for more severe criminal legislation and tougher policies against crime.

The Special Rapporteur on indigenous people, visited Ecuador from 28 April to 4 May 2006 (please refer to document A/HRC/4/32/Add.2).

A. Legislation

81. The Special Rapporteur recommends that the National Congress of Ecuador enact legislation concerning the collective rights of indigenous nationalities, peoples and communities, as established in the country's Constitution, relating in particular to the administration of justice; indigenous territorial areas; rules governing such economic activities as oil operations, mining, logging, agriculture, fishing and tourism, in addition to others that affect natural resources in indigenous territories; bilingual intercultural education; conservation and preservation of the cultural heritage of indigenous peoples; respect and protection of peoples in voluntary isolation; the right to prior, free and informed consultation and consent in accordance with international law; indigenous health services; prevention and punishment of sexual offences; exploitation in conditions of servility, the forced and commercial exploitation of women and girls belonging to indigenous peoples and nationalities; extension of various social services to indigenous communities; biodiversity and environmental conservation and management; economic development plans and projects; an office for the human rights of indigenous peoples; and local, communal and regional forms of indigenous government.

82. The Special Rapporteur recommends strengthening the legal arrangements underpinning indigenous institutional structures in the various established bodies. Specifically, the Special Rapporteur recommends that DINEIB, the Department for Intercultural Health and CODENPE be given the appropriate legal status, and that the necessary resources be assigned to them so that they can raise the quality of their services.

83. The Special Rapporteur recommends that the Ordinary and Indigenous Justice Compatibility Act be adopted and that the Government request the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide technical support for the legislative development of indigenous justice.

84. The Special Rapporteur recommends that all Ecuadorian authorities, particularly notaries and registrars of property, be trained in the legal system pertaining to ancestral and historical indigenous territories and the creation of rights in rem.

B. Northern border and environment

85. The Special Rapporteur recommends that the Governments of Ecuador and Colombia appoint an independent international commission to study the effects of aerial spraying on indigenous border populations. Corresponding binding measures are also recommended, to provide compensation for the damages caused.

86. The Special Rapporteur recommends that Colombia definitively halt the aerial spraying of illicit crops in the border region with Ecuador.

87. The Special Rapporteur recommends that the Ecuadorian Government draw up and apply an emergency plan (in consultation with the region's indigenous peoples) on the critical situation of indigenous border communities (particularly the Awá), as a result of the impact of the internal conflict in Colombia, illicit drug production and trafficking activities, environmental degradation, the influx of indigenous refugees from Colombia and the situation of violence and insecurity in the area. Concessions granted to oil and mining companies must be reviewed. The State must shape public policies aimed at protecting the various sectors,

peoples and communities who live on the northern border, with their full participation, including the right to free, prior and informed consultation.

88. The Special Rapporteur recommends that Ecuador implement measures (including those under CITES) to ensure rigorous control of timber species in indigenous lands, in particular those inhabited by peoples in voluntary isolation, and coordinate actions with the various State authorities to ensure effective protection in the trade and export of all species.

C. Consultation, participation and recognition

89. The Special Rapporteur recommends that all Ecuadorian authorities comply with the provisions of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in the Sarayaku case, and more specifically, that the State Procurator-General unconditionally uphold the unimpeded protection of the Sarayaku community, including its rights, its land ownership and the life and physical integrity of all of its members.

90. The State must recognize the ancestral lands of the Shuar and other Amazonian peoples who have yet to receive this recognition.

D. Security, social protest and justice-related activities

91. The Special Rapporteur recommends that the armed forces abstain from concluding service provision contracts with oil companies that could damage the rights of the indigenous communities in whose territories they are operating.

92. The Special Rapporteur recommends that Ecuador carry out a thoroughgoing investigation into accusations of abuse and violence against members of indigenous communities committed by some elements of the armed forces, under the auspices of the said contracts, and that those responsible are punished. It is further recommended that any inappropriate arrangement between the aforementioned companies and the armed forces, which has its aim to protect the private economic interests of the companies and could damage the legitimate rights of the indigenous peoples and communities in the regions affected by the activities of the oil companies, be prevented.

93. Following the disproportionate response of the authorities to the social protest mounted by indigenous organizations during the state of emergency against the free trade treaty, the Special Rapporteur recommends that the Government carry out a thoroughgoing investigation into the events and punish, among others, those who abused the human rights of the indigenous demonstrators.

E. Peoples in voluntary isolation

94. The Special Rapporteur recommends that the Human Rights Council call on the three countries involved in protecting the peoples living in voluntary isolation (Colombia, Ecuador and Peru) and the international community to pool forces and resources in order to protect and safeguard endangered indigenous peoples living in the Amazonian region.

(The Special Rapporteur made a similar recommendation to the Colombian Government following his mission there in 2005.)

95. In the “untouchable” area and the Yasuní National Park, any oil activities shall be suspended and illegal logging shall be punished, in addition to any activity that disturbs the peace of peoples living in voluntary isolation. Furthermore, an integrated programme for the restructuring of the local economy in Huaorani regions shall be drawn up, and real and effective controls shall be set in place to prevent the removal of timber from these territories.

96. Prompt steps should be taken to enact the necessary national legislation for the promotion, protection and safeguarding of the rights of peoples in voluntary isolation, in strict compliance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council.

97. In the Andean region, the Special Rapporteur recommends that the State take into consideration the intercultural realities of the area, in addition to the needs and rights of indigenous communities, in connection with any State activities relating to the conservation, management and development of inter-Andean corridors, forests and heathlands in the region, and ensure respect for the lands and territories of indigenous peoples and nationalities.

F. International cooperation and the academic sector

98. The Special Rapporteur recommends that international cooperation agencies consider and pay particular attention to indigenous needs in their various specialized areas.

99. The Special Rapporteur recommends that university and research institutions, both in Ecuador and abroad, focus on and adapt their programmes to the constitutional principles of multiculturalism and the promotion of the human rights of indigenous peoples.

The Working Group on the question of the use of mercenaries visited Ecuador from 28 August to 1 September 2006 (please refer to document A/HRC/4/42/Add.2).

In concluding its visit to Ecuador, the Working Group therefore:

(a) Calls for the swift accession by Ecuador to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Working Group notes with appreciation the positive indications from the National Congress and the Ministry of External Relations that steps are being taken in this direction;

(b) Emphasizes the need for rigorous national legislation, to regulate and monitor the activities of national and transnational PMSC, in order to ensure the responsibilities of the State to effectively protect and promote human rights. In this regard, the National Congress is encouraged to enact law No. 24804 to prohibit the recruitment, use, financing and training of mercenaries, submitted on 17 August 2005 by a Member of Parliament. An alternative approach would be to establish acts committed by mercenaries as well as mercenary-related activities as an offence in the Criminal Code.

(c) Urges the Ecuadorian authorities, especially to the Public Ministry and the General Fiscal Minister of the State, to complete promptly the investigations surrounding the PMSC Epi Security and Investigations in Manta, which offered to recruit Ecuadorian and foreign nationals for security work in Iraq. The Working Group encourages appropriate follow-up action on the basis of these investigations, and invites the authorities to share the conclusions and results thereof openly with civil society;

(d) Takes note of resolutions DAP-001-204 of the Ecuadorian Ombudsman and R-25-132 of the National Congress and urges the competent authorities to accept the resolutions emanated by these organs regarding the consequences of the spraying in the north frontier of Ecuador;

(e) While recognizing the Government's efforts and those of other organs of the Ecuadorian State to adopt measures and to establish the necessary legislation for the regulation of this sector, the Working Group notes with concern the advance of a trend and the appearance of new modalities in private security. The Working Group calls upon the authorities to be vigilant and alerts the State about the necessity to ensure that the Juntas de Defensa del Campesinado do not become paramilitary actors;

(f) Considers that the lack of complaints filed regarding the activities of PMSCs in Ecuador demonstrates the limited knowledge by the population about human rights procedures. In this sense, the Working Group invites Ecuador to pursue measures, in line with articles 3 and 16 of the National Constitution, relating to: (a) the defence, promotion and protection of the rights of Ecuadorians; and (b) the plans provided for in the Political Constitution of Ecuador, in particular the National Human Rights Programme, issued under Executive Decree No. 1527 of 24 June 1998, aimed at fostering human rights education for diverse sectors of the society in schools, jails, among vulnerable populations and minorities, and to include among them the staff of private military and security companies, so that these rights are recognized and demanded by the population.

Ethiopia

Introduction

During the period under review, the Independent expert on minority issues visited Ethiopia from 27 November to 8 December 2006 (please refer to document A/HRC/4/9/Add.3).

98. As a matter of priority the federal Government should:

- Take measures to depoliticize ethnicity and promote policies of inclusion, shared power and cooperation. Such measures could include urging political parties to develop non-ethnic policies and programmes, opening membership to those of different ethnicity and facilitating greater participation and membership of women from all ethnic groups;
- Treat those political opposition leaders, journalists, students and human rights defenders currently detained according to international law and standards of fair and speedy trial, and where no evidence exists for conviction release them immediately;
- Guarantee freedom of opinion, speech and the right of peaceful assembly at all times, in accordance with its obligations under international law;
- Take urgent and culturally appropriate security measures for all communities in high-risk areas, including Gambella State, to ensure protection of all communities and to promote the safe return of those who have fled their homes or lands due to violence and conflict;
- Address the needs of historically marginalized ethnic groups in the least developed regions in urgent need of infrastructure, sanitation, health-care services, and education facilities, with appropriate resources and development policies;
- Urgently address ongoing inter-ethnic tensions and conflict with conflict prevention and resolution measures. Community-led conflict prevention and management initiatives and Government-sponsored initiatives that include respect for traditional and customary conflict prevention and resolution mechanisms should be encouraged;
- Ensure that civil society groups are free to function without interference, harassment, undue restrictions on their registration, activities, or ability to seek and accept funding. The establishment of civil society groups representing the interests of marginalized or disadvantaged communities should be encouraged as a means to ensure representation of their issues;
- Ensure that the activities of the Ethiopian National Defence Forces acting in any region are appropriate for and sensitive to local conditions, including in regard to their ethnic composition; their distribution and the location of their barracks; their duties; and their disciplinary standards. Military forces should be deployed in border areas only and not utilized for policing functions.

99. Additionally the Government should take the following measures:

- A national conference on the functioning of the system of ethnic federalism should be convened, open to the participation of all political parties, regional authorities, civil society and nations, nationalities and peoples;
- To ensure effective implementation and application of the international human rights instruments to which Ethiopia is a party and that are incorporated into the federal Constitution, the texts of the treaties should be published in the official Gazette. Awareness-raising and training initiatives should be undertaken to educate public officials and the judiciary;
- Ensure the independence of judges and lawyers and the impartiality of the judiciary. The right to a speedy trial should be guaranteed in fact as well as in law;
- Federal authorities must ensure that regional state constitutions and laws conform fully with the federal Constitution and with international human rights law. In particular, the activities of regional public bodies, and traditional customary and religious courts must be regulated to ensure such compliance;

- Without undermining or circumventing the authority or jurisdiction of the regional governments, the federal Government should provide enhanced assistance, training and support appropriate to ensuring the effective functioning of regional authorities;
- Make every effort to fulfil its responsibilities to report to United Nations treaty monitoring bodies according to the obligations voluntarily undertaken by Ethiopia;

Ensuring group survival

- Take urgent steps to protect the existence of some of the small minority groups in Ethiopia. Research should be undertaken into the situation of such communities and measures adopted to protect disadvantaged groups and those facing external threats to their existence;
- Grant land title in recognition of historic usage in order to ensure security of land tenure for all communities, including minorities facing encroachment on traditional lands. The recognized system of land tenure should include protection of the use of land by pastoralist groups, and recognize individual and a variety of collective ownership arrangements;
- Ensure that communities are secure from forced displacement or eviction from their lands and that measures are undertaken to effectively consult with communities regarding decisions that affect them and their respective territories. Communities relocated according to the law must be consulted regarding appropriate compensation and relocation arrangements, including land of comparable quality. Communities receiving relocated populations must also consent;

Language and culture

- Make available adequate funding and resources to assist teaching of and instruction in minority languages in public schools at the regional level. Such mother tongue language provision should be available to all communities, to the fullest extent possible;
- Maintain the principle of free choice in language education, and the opportunity to study and be instructed in both the mother tongue and the official national working language of Ethiopia (Amharic) at the regional level, to the fullest extent possible;
- Enhance its efforts to eradicate harmful traditional and cultural practices that are contrary to international human rights standards. In addition to legal prohibition, culturally appropriate education and public awareness programmes to this end are required;
- Protect the range of cultural practices and lifestyles that exist in Ethiopia including accommodation of the rights and needs of nomadic pastoralist communities and other non-settled communities;

Non-discrimination and equality

- Pass a comprehensive law on non-discrimination and equal treatment, applicable at both federal and state levels, to bring into effect constitutional non-discrimination and equality guarantees. Such legislation should identify discriminatory acts and practices including in the areas of employment, education, housing and social services. Legislation should be applicable to both public and private spheres.
- Establish a statutory body, under anti-discrimination law, charged with monitoring and enforcing anti-discrimination legislation, and with the authority to receive complaints and issue legally binding decisions in cases of discrimination;
- Undertake targeted policy initiatives at the federal and state level to address the unique circumstances of multidimensional discrimination experienced by minority women due to their gender and their status as members of disadvantaged ethnic groups;
- Require the Ministry of Women's Affairs to undertake a survey in each region of the traditional customary and religious laws and practices of all ethnic groups that impact on the constitutional guarantee of equality to women;

- Ensure, in legislation and in practice, that protection of the property rights of women are equal to those of men, including rights to own and inherit property. In particular the rights to property of widows, divorced women, and those affected by conflict should be legally protected;

Political participation

- Ensure the representation of smaller and/or migrant communities from other states within regional councils, including through constitutional review. At the federal level, political bodies including the House of Federation should, to the fullest extent possible, ensure the representation of minority communities;
- Promote measures to ensure the participation of women from minority communities in federal government bodies, and in all regions, in particular Somali, Gambella, Benshangul/Gumuz and Afar where representation of women is extremely low;

Poverty

- Fully implement the recommendations of the independent expert in her annual report to the Human Rights Council in March 2007 (A/HRC/4/9) in regard to minorities, poverty and the Millennium Development Goals;
- Institute, in collaboration with the Central Statistical Authority, a programme of collection of data disaggregated by ethnic group so as to reveal inequalities across groups and allow for development of appropriate targeted poverty reduction strategies;

Civil society and national human rights institutions

- Require the Human Rights Commission of Ethiopia to conform to the Paris Principles in regard to its organization and the independence of its functioning, and apply for accreditation with the International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights. The Commission and the human rights ombudsman should give significant, dedicated consideration to minority issues within their respective mandates;
- Take steps to guarantee the safety and independent functioning of human rights defenders in accordance with the Declaration on Human Rights Defenders adopted by the United Nations General Assembly in December 1998;

The international community

- Request the international community to make special efforts to supply technical assistance and development cooperation to the Government of Ethiopia to achieve the recommendations made in this report. As the seat of the African Union and regional headquarters of many international organizations, the international community should have a special interest in assisting Ethiopia to be the exemplar of the highest aspirations of human rights, development and security cooperation.

Germany

Introduction

During the period under review, the Special Rapporteur on education visited Germany from 13 to 21 February 2006 (please refer to document A/HRC/4/29/Add.3).

89. Germany has extensive public education coverage and is one of the few countries which has raised the age of compulsory school attendance to 18. The country also has a high level of school attendance in all areas. There are, however, certain shortcomings, owing primarily to the complex structure of the educational system, mostly related to difficulties encountered by children in certain marginalized categories, such as children from lower social classes, of immigrant origin or with disabilities. This has the effect of making the educational system somewhat exclusive in nature.

90. One of the main causes of this exclusion is the system of classification, which is carried out at a very early age and following criteria that are neither clear nor uniform. The resulting evaluation depends to a large extent on the particular regulations in force in each Land and on the teachers, who are not always properly trained to carry out this task. Germany should reform its educational system in such a way that it preserves its current merits, such as the high level of school attendance, while overcoming its inequalities and the lack of opportunity for certain population sectors. A rights-based approach to education would make it possible to conduct the necessary reforms to meet the educational needs of all members of the population.

91. The Special Rapporteur recommends to the Government of the Federal Republic of Germany:

- (a) That it include uniform safeguards for the right to education in the constitutions of its Länder and in its Basic Law, which will also promote consistency with processes under way in the rest of Europe and ensure that due attention is given to the corresponding State obligations;
- (b) That these safeguards should ensure the participation of the parents of schoolchildren, as appropriate, in all decisions relating to the placement of their children in educational centres and to the choice of the modes of education;
- (c) That an extensive national debate should be launched on the relationship between the educational systems currently in operation and the phenomena of exclusion and marginalization of schoolchildren, in particular those of immigrant origin or with disabilities. This debate should also consider the appropriateness of maintaining a two or three-track system;
- (d) That preschool education should form part of the ordinary education system, that it should be provided free of charge and accessible to all children, and that the arrangements for admission to preschool education should be reviewed to ensure that the right to education is not withheld from any child;
- (e) That, working in association with universities and teacher-training colleges, the accent should be placed on educational theory, in particular, on methods of teaching human rights, rather than on specific subject areas;
- (f) That a study should be conducted into ways of levelling out the salary and professional conditions applicable to teachers in the different school systems and levels;
- (g) That it should review the policy and practice of classifying school pupils (at the age of 10) used to assess children for entry to the lower secondary level of education, with a view to determining whether classification at such an early age is appropriate to the rights, interests and needs of the children themselves;
- (h) That it should step up the social, economic and educational support provided to schoolchildren whose mother tongue is not German;
- (i) That human-rights-based studies should be conducted into ways of boosting the quality of education in the country.

92. Given the risk that, under the current system, children living in Germany might be denied the right to education, it is recommended that studies be carried out to clarify the actual school attendance situation of asylum-seeking children, refugee children or children without the proper papers; and also to appraise as a

matter of urgency the legal framework for the protection and promotion of the human right of such children to education, including exploring the possibility of withdrawing Germany's reservations and declarations made to the Convention on the Rights of the Child.

93. It is also recommended:

- (a) That arrangements be set in place to improve the compilation and processing of complaints relating to violations of the right to education of refugees, refugee applicants and asylum-seekers, and also of persons who do not have a legal immigration status;
- (b) That consideration be given to the possibility of ratifying the Convention on the Rights of Persons with Disabilities;
- (c) That Federal law and state law be reformed so as to ensure that they strengthen the obligation of the educational authorities to provide education to persons with disabilities;
- (d) That efforts be made to promote the inclusion of schoolchildren with disabilities in the ordinary education system;
- (e) That more persons with disabilities be trained as teachers;
- (f) That, as a matter of urgency, a national inventory be compiled of the accessibility conditions of school buildings and plans drawn up for their reconstruction, so as to facilitate access by persons with disabilities;
- (g) That the necessary measures should be adopted to ensure that the home schooling system is properly supervised by the State, thereby upholding the right of parents to employ this form of education when necessary and appropriate, bearing in mind the best interests of the child;
- (h) That the level of implementation of the first phase of the World Human Rights Education Programme should be appraised, in accordance with General Assembly resolutions 59/113 A and B.

Guatemala

Introduction

During the period under consideration, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances visited Guatemala.

The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Guatemala from 21 to 26 August 2006 (please refer to document A/HRC/4/20/Add.2).

63. Guatemalans are not ignorant of the problems confronting their country and are aware of the policies that could be pursued to ameliorate those problems. First, Guatemala has the detailed plan for social transformation provided in the Peace Accords. Moreover, Guatemala has received copious recommendations from the international community on how to realize the commitment made in the Peace Accords and its obligations under international human rights law. In addition to the many reports by government commissions and national and international non-governmental organizations, there have been a multitude of reports from MINUGUA, OHCHR, the United Nations Human Rights Committee, and the special procedures of the former Commission on Human Rights, now the Human Rights Council. The question today is less what should be done than whether Guatemala has the will to do so. Thus, with the understanding that other reports have already provided sound and widely-understood recommendations regarding nearly every facet of the problem of extrajudicial executions facing Guatemala today, I will be sparing in my recommendations and succinct in my conclusions:

- Many kinds of violence afflicting Guatemala are poorly understood, impeding efforts to craft solutions and mobilize coalitions for change;
- Continuities between current violations and those from the period of armed confrontation are surprisingly widespread and should be the cause of great concern among both the national and international community;
- The resort to executions of suspects and other persons considered socially undesirable as a strategy for ensuring order and reducing crime should be absolutely and categorically rejected at every level of Government;
- While there is insufficient information to reliably determine how many killings are committed by State agents versus private individuals, both appear to be widespread. Any strategy to confront these killings must have two prongs:
 - Relentlessly root out the practice of social cleansing by government bodies;
 - Reform and expand the criminal justice system - especially the PNC and the Ministerio Público - to effectively investigate and prosecute murders;
- A lack of political will and of resources allocated to criminal justice has made effective crime control impossible. Guatemala must fully accept the scope of State responsibility under international law and take the necessary measures - including costly measures - to bring crime under control in a manner that is effective and just;
- Congress should enact the legislation required to implement CICIG and the package of security-related legislation needed to realize the Peace Accords;
- Congress should greatly increase the funds allocated to the institutions of the criminal justice system;
- A witness-protection programme adequate to address the needs and fears of witnesses, including victims, to human rights violations in which the State or other powerful actors are implicated. This might be established under the supervision of the PDH;
- The counterproductive division of responsibility for conducting investigations between the Ministerio Público and the PNC must be ended. Establishing a system of investigative prosecutors is one possibility that should be considered;

- Foreign donors are playing a complex, and in some ways problematic, role: rather than funding projects that the State cannot afford, they are funding projects that the State has simply opted not to be able to afford. Insofar as these projects benefit those with the least power over the legislative agenda, such foreign assistance is commendable. Moreover, foreign assistance makes up a relatively small proportion of the Government's budget, and its withdrawal would not necessarily stimulate more responsible fiscal policies. Nevertheless, the donor community should carefully consider whether its assistance is doing as much as possible to push the State to assume its own responsibilities.

64. At the end of the day, even the crisis in relation to extrajudicial executions can be attributed in good part to the Government's failure to behave in a fiscally responsible manner. The refusal of the elites to raise the overall level of income derived from taxation to a level at which an honest and effective police force and system of justice can be afforded, along with a system which respects core economic, social and cultural rights, has produced predictable and sometimes disastrous results. After all, even Governments get what they pay.

The Working Group on Enforced or Involuntary Disappearances visited Guatemala from 19 to 21 September 2006 (please refer to document A/HRC/4/41/Add.1).

99. The Working Group recommends that the State undertake all necessary measures to harmonize domestic laws with international human rights instruments, especially with the Declaration for the Protection of All Persons from Enforced Disappearance, and to ensure the full implementation of international law in practice. Particularly, the Working Group recommends that the element of non-State actors as potential perpetrators of enforced disappearance be eliminated from the legal definition of the crime. Also, the death penalty should be eliminated for enforced disappearance.

100. Other legislative measures should include:

- (a) The adoption of a law to create an independent National Commission for the Search for Victims of Enforced or Involuntary Disappearances, along the lines of a draft law to be prepared by the High-Level Preparatory Commission for Promoting Proposed Legislation for the Creation of the National Commission for the Search for Victims of Enforced or Involuntary Disappearance;
- (b) Adoption of a law on access to public information, which in turn could serve as the legal protection for the Armed Forces and National Police Archives (with its 50 million documents). This law should provide for the establishment of a body granted with acting and budgetary autonomy, in order to guarantee that preservation of such archives is not at jeopardy as a result of political factors, such as changes of Government or similar circumstances; and
- (c) Approval of a law on the declaration of death as a result of enforced disappearance, without prejudice to the rights of the victims to truth, justice and reparations, and therefore, without prejudice to the State's obligations to continue with the investigations of pending cases, to uphold the prosecution and punishment of those responsible for the crime, and to adopt the necessary measures to satisfy the rights of victims and their loved ones.

101. Other measures should include:

- (a) Training justice officials, especially prosecutors and judges, in aspects of the crime of enforced disappearance under international law, as well as in techniques for effective investigation and criminal prosecution for enforced disappearances; and
- (b) The application by courts of international standards in their decisions regarding cases of enforced disappearances, including the non-applicability of statutes of limitation, the continuing nature of the crime and the fact that civilian courts should be the competent courts to hear enforced-disappearance cases.

102. Good cooperation and coordination between all State institutions and other non-governmental actors is crucial in order to create a systematic approach to the complex problem of addressing the cases and legacy of enforced disappearance in Guatemala. The 10 programmes of the National Plan (2006-2016) for the Search of

Persons Disappeared during the Internal Armed Conflict, proposed by the Search Committee should comprehensively be put into practice without further delay, within an atmosphere of mutual cooperation amongst all relevant actors.

103. The National Plan (2006-2016) proposed by the Search Committee should be reviewed and approved by Congress.

104. An annual report on the implementation of the National Plan (2006-2016) should be prepared by all participants and submitted for consideration by Congress. Thereafter, the annual report should be made available to the general public.

105. In a cooperative environment among all players, a single and unified Public National Registry of Victims of Enforced Disappearance should be established.

106. Additionally, necessary resources should be supplied for the realization of all activities of all those institutions and actors involved in the process of the investigation and punishment of enforced disappearances.

107. Along with the concerns expressed by the Human Rights Committee (CCPR/CO/72/GTM), the Working Group calls on the State to “give special priority to investigating and bringing to justice the perpetrators of the human rights violations, including police and military personnel” (para. 13).

108. Habeas corpus procedures that have been suspended in contradiction with the Declaration should be reopened and investigations should be effortlessly continued in order to endeavour to clarify past cases of enforced disappearances.

109. The Working Group urges the State to take effective measures to prevent the repetition of acts of intimidation and other forms of attacks on witnesses and on human rights defenders involved in the investigation of cases of enforced disappearance, so that the above-mentioned actors are able to carry out their functions without persecution of any kind.

110. In spite of the National Reparations Programme, which has existed since the beginning of 2003, reparation measures have still not been applied for most of the victims. The Working Group strongly recommends the comprehensive application of the Programme, which should not be limited to the payment of monetary compensation.

111. The Working Group reiterates its request that the Government of Guatemala and others with relevant information provide it to the Working Group for the clarification of the nearly 3,000 remaining cases of disappeared persons still pending with the Working Group.

112. Guatemala is encouraged to seek the advice and technical assistance of the various bodies of the United Nations, in particular the Office of the High Commissioner for Human Rights, in the effective implementation of the above recommendations.

Haiti

Introduction

During the period under review, the Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti submitted a report to the Human Rights Council (please refer to document A/HRC/4/3).

88. “Learning to be a democracy is an extremely difficult exercise”, declared René Préval on 17 January 2007. Why, indeed, after so many reports and studies, expert assistance provided in programmes, seminars and symposiums, optimistic declarations of intent containing promises all too often forgotten, does the will for change in Haiti still seem doomed to failure?

89. Why is this people which, on its own, was able to rid itself of oppression, a nation steeped in the talent of its writers, poets, storytellers, musicians and singers, incapable of ridding itself of some of its own demons?

90. Why indeed is it that, from rumour to manipulation, doubt becomes truth? And why does “condemnation” always prevail over “tolerance”, and why do “political adversary” and “enemy” so often become synonyms: “If you are not with me, you are against me”?

91. The poorest of the poor, Haiti has returned to the path to constitutional legality. Will its people find the path to sustainable development and, hence, the stability of a State based on the rule of law that cannot enjoy constitutional legality unless it recognizes the indivisibility of civil, political, economic, social and cultural rights?

92. Haiti must not succumb to the pressure of the serious events of the recent past. The reforms must be relentlessly pursued. There is no question that the fight against drug traffickers and mafia-type political violence is an absolute priority. A priority not only in order to ensure people’s safety but also - and I am tempted to say “above all” - to eliminate, neutralize or disarm the gangs that have become the supporters - at times objective, at other times subjective - of an undeclared destabilization campaign, whose watchword is “chaos rather than change through the ballot box”. Any slowdown in the reform process would, without a doubt, play into their hands.

93. More than ever, through their capacity for mobilization - which must be free of all sectarianism - and through the diversity of their fields of action, civil society organizations are, indisputably, called upon to play a decisive role in mobilizing forces. Which is why vigilance must be the order of the day when it comes to new threats, particularly to NGOs involved in upholding human rights. The independent expert hopes that, at this time of risk, the Human Rights Council will demonstrate its solidarity with them.

94. It is in the light of this conclusion that the recommendations that follow must be considered, despite their technical nature. While most of them are not new, it seems that, this time, they may benefit from genuine political will.

95. For reasons of pragmatism, the independent expert has limited the number of recommendations to the nine following proposals:

- (a) Inspection bodies: the reduction of the malfunctions cited above, which often stem more from individual actions than from any shortcoming in the law, will not be effective unless the capacity of the inspection bodies of both the police and of the judiciary is reinforced, particularly their capacity to conduct in situ inspections;
- (b) Reform of the judiciary: high priority (and this priority should be taken into account in the preparation of the parliamentary calendar) must be assigned to the adoption of the almost finalized three bills, without which

there can be no real reform of the judiciary, namely the bills on the reform of the judiciary regulations, the reform of the Supreme Council of Justice, and the reform of the Judicial Training College;

(c) Combating extended detention: it is important to provide for the possibility of imposing suspended sentences and restore, but with tangible effectiveness, recourse to “immediate appearance” by organizing for the police - given their hesitation - short but regular decentralized training sessions that involve prosecutors, whose role of providing impetus and follow-up is decisive for the success of this essential change in police practices;

(d) Legal assistance: the working group charged with preparing a bill also envisaged in the Plan of Action of the Ministry of Justice. In this regard, the independent expert hopes that experiments in the provision of legal assistance, particularly those conducted by the Legal Assistance Office in Cap Haïtien, will be taken into account;

(e) Forensic medicine: adoption of texts, prepared several years ago, concerning the independent status of the Institute of Forensic Medicine and its operation;

(f) Status of women: adoption by Parliament - if possible in a single law, entitled “Status of Women Act” - of the following texts:

- The decrees issued by the Transitional Government (with a view to their passage into law) concerning:
(a) categorization of rape as a major crime and no longer only as indecent assault; (b) termination of adultery as an extenuating circumstance in the murder of a wife (or her partner) by a jealous husband; and

(c) decriminalization of adultery;

- Texts on the status of women concerning the decriminalization of abortion, admissibility of paternity proceedings, the status of concubines (*plaçage*), and regulation of domestic work;

(g) Family Planning Programme: priority implementation of the “contraception” section (including popularization of the “morning-after pill”) and a real policy of controlled procreation;

(h) National Identification Office: requested by the independent expert from the very inception of his mandate, the reform of civil status appears to be on the right track with the anticipated establishment, by the Plan of Action of the Ministry of Justice, of a special working group. The working group should receive substantial support from international cooperation mechanisms - given the cost and complexity of the operation - as was the case with the creation of the electoral roll;

(i) Reform of the land register: prepare an inventory of relevant studies and experience, and undertake the reform, also with international cooperation mechanisms. Given its economic importance and the time it would take to prepare and implement, the reform should be started without delay if it is to have any chance of being completed during the current presidential term.

Honduras

Introduction

During the period under consideration, the Working Group on Arbitrary Detention and the Working Group on Mercenaries visited Honduras.

The Working Group on Arbitrary Detention visited Honduras from 23 to 31 May 2006 (please refer to document A/HRC/4/40/Add.4).

98. On the basis of its findings, the Working Group recommends the following measures.

99. With regard to the situation of the detainees held under the old criminal procedure code:

- (a) All detainees held under the old criminal procedure code who have been acquitted in first instance should be released, in accordance with the Supreme Court judgements but without any need for further pronouncements of the Supreme Court. This is a matter of urgency and can be solved within a few weeks;
- (b) Significant resources need to be assigned to addressing the situation of preventive detainees held under the old code and priority should be given to solving their situation. An ambitious but feasible time plan for resolving their cases should be drawn up expeditiously under the leadership of the Supreme Court. There must be a time set in the not too distant future at which the rules on preventive detention of the new code shall apply to all detainees.

100. In order to strengthen the control over the legality of detention at all stages of the criminal justice process:

- (a) All institutions in which persons are detained need to maintain complete and transparent records showing the legal basis for detention. In particular, police stations need a single record book showing all information relevant to the case of each person passing through police custody, providing proof of the duration of each phase of custody and of the authority responsible, and certification by the relevant authority of all transfer of custody;
- (b) *Jueces de ejecución* should carry out their mandate proactively as set forth in the criminal procedure code, and need to be equipped for the purpose (e.g. with vehicles and information technology);
- (c) Measures need to be taken to render public defence more effective. These could include both providing material resources, such as offices, computers, vehicles, and providing training. However, on a more fundamental level, thought will need to be given on how to strengthen their role as lawyers acting on behalf of a client, even if they are paid out of public funds;
- (d) In all events, when the legal basis for deprivation of a person's liberty has expired, whether held in a police station, a prison, or an IHNFA facility, the authority holding the detainee must release him or her, without any further need for a judicial decision.

101. Honduras needs to establish a penitentiary system as a separate institution, run by professional penitentiary management and staff, not connected to the police. Such a separate system is necessary to prevent arbitrary detention and ensure that, as prescribed by the Constitution, detention is aimed at rehabilitation and preparation for a working life outside prison.

102. In the meantime, already before legislation to this effect can be passed and put into practice, steps should be taken to bring the prison system closer to compliance with the Standard Minimum Rules for the Treatment of Prisoners. Penitentiary facilities should respect the separation between remand and convict detainees; women should be held separately from men; persons with serious mental health problems and those terminally ill require special attention which is better provided outside prison. Internal disciplinary and complaints procedures should be established and complied with, so that the rule of law extends to penitentiary facilities.

103. All branches of Government, seeking input from civil society as well, should reconsider the response of both the criminal justice system and the State in general to the young men and women belonging to *maras*. The current system, based exclusively on repression, in particular rules governing detention which in practice violate international human rights law, does not appear to be able to either address the root of the problem or enhance the security of the population.

104. Vigorous guarantees for defendants must go hand in hand with a strong police and public prosecution service. To this end, the investigative capacities of the public prosecution must be strengthened. Serious thought should be given to providing the Ministerio Público with its own investigative police, whether by reversing the 1998 “divorce” between investigative police and public prosecution or otherwise.

105. On a more general level, the Working Group finds it useful to underline that in its experience it is through preventive action and vigorous, well-resourced law enforcement that rising crime levels are best fought. Relaxing safeguards against arbitrary detention, which Honduras has strengthened through its recent criminal procedure reform, and thereby undermining the rule of law has not yet proved to be an effective way to respond to the justified demand of security of a society.

The Working Group on Mercenaries visited Honduras from 21 to 25 August 2006 (please refer to document A/HRC/4/42/Add.1).

45. As mentioned above, Honduras is a party to the main international human rights instruments. It has ratified the Rome Statute of the International Criminal Court, which has jurisdiction over persons who commit serious international crimes. It has acceded to the Geneva Conventions of 12 August 1949 and Additional Protocols I and II thereto.

46. In the context of international humanitarian law governing the rules of war (*jus in bello*), article 47 of Additional Protocol I defines a mercenary and establishes that a mercenary is not a combatant and shall not be considered a prisoner of war in case of capture, but does not define mercenary activities as an international crime or establish any obligation to punish such activities.

47. In the context of international law on human rights, the stability of Governments, non-intervention and the territorial integrity of States, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries ensures the protection of human rights and the application of *jus ad bellum*.²³ In defining mercenaries, the Convention adopts the criteria established in article 47 of Additional Protocol I, but it also categorizes as offences both the activities of mercenaries themselves and those of persons involved in recruiting, using, financing or training mercenaries. The provisions of the Convention establish an obligation to punish a mercenary who “effectively participates directly in hostilities or in an act of violence”. Honduras is not a party to this Convention.

48. The Hondurans and Chileans recruited and trained in Honduras meet some of the Convention criteria. In the first place, mention should be made of the fact that they have received military training, have been provided with combat weapons such as machine guns or assault rifles, and have been issued with uniforms very similar to those worn by United States soldiers in Iraq and with bullet-proof vests and helmets. The fact that they had to do front-line guard duty in the “Green Zone” in Baghdad could very well be interpreted as indicating that they were specially recruited abroad in order to fight in an armed conflict. In an armed conflict such as the one in Iraq it is impossible to distinguish between regular combat troops and auxiliary support forces, particularly in situations where private guards provide protection to convoys, buildings, people or equipment.

49. They also meet certain other criteria in the Convention definition, such as the fact that both the private security companies involved in the recruitment, training and financing of those engaged and the individual Hondurans and Chileans were motivated essentially by the desire for private gain. They also meet the criteria of being neither nationals of a party to the conflict nor residents of territory controlled by a party to the conflict, and not having been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

50. It remains to be determined whether the Hondurans and Chileans were acting as members of the armed forces of a party to the conflict, i.e., whether, having been recruited under a contract with the United States Department of State, they were members of the United States Army.

51. It also remains to be determined whether the Hondurans and Chileans participated in the hostilities. In an armed conflict such as the one in Iraq, the line separating the passive services for which they were recruited, such as personal security detail, fixed-facility security or convoy security, from actions involving participation in the hostilities in case of attack, is a very fine one that may easily be crossed.

52. The Convention states in its preamble that “matters not regulated by such a convention continue to be governed by the rules and principles of international law”.

53. In the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the General Assembly affirmed that “the principles of the Charter which are embodied in this Declaration constitute basic principles of international law”, and “consequently [appealed] to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles”.

54. As a Member of the United Nations and of the international community, Honduras has undertaken to observe international law. This was recently affirmed by the Ministry of Foreign in its reply to the Working Group on Mercenaries by reference to article 15 of the Constitution, which states that “Honduras endorses the principles and practices of international law, which promote solidarity, respect for the self-determination of peoples, non-intervention and the strengthening of universal peace and democracy”.

55. By making it possible for a Honduran private security company, a subsidiary of a North American private security company that was itself subcontracted by another company to which the United States Department of State had awarded a security contract in the “Green Zone” in Baghdad to recruit and train Honduran and Chilean nationals on its territory and send them to Iraq, Honduras has failed to uphold principles of international law. Furthermore, as a State party to the Rome Statute, Honduras should have refrained from exposing its own nationals to military service in a situation of armed conflict, or sending the nationals of another country through its territory for that purpose.

56. The fact of delegating what are normally functions of the State to private entities does not relieve Honduras of its obligation to guarantee security, law and order, the rule of law and respect for human rights, or of its responsibility to uphold the principles of international law.

57. It is worth asking how far a State can cede control of public security to foreign private security companies before losing part of its sovereignty and before the situation becomes one of interference in the internal affairs of that State.

58. In the case of Iraq, the Honduran authorities should have made an assessment of the services to be provided by the persons recruited by the private security company. In a situation of armed conflict such as the one in Iraq, services such as personal security detail, fixed-facility security or convoy security and other general security-related duties would inevitably require the Hondurans to carry heavy weapons in order to deal with war situations and involve a constant risk of entering into direct engagement with Iraqi insurgents or

becoming cannon fodder. Several persons who provided statements made the point that they were given clear orders that if they were attacked, they should not respond and open fire on the attackers. In the specific case of one Honduran who was reportedly attacked by mortar fire and opened fire in self-defence, his contract was terminated on the spot and he was expelled from Iraq.

59. In the context of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and under customary international law, Honduras, as a member of the international community, had a responsibility to prevent the use of its territory for the recruitment and training of persons and the financing of activities for the purpose of participation in an armed conflict.

60. Any illegal acts committed during an armed conflict such as the one in Iraq by the persons recruited and trained by private military and security companies in Honduras are subject to international human rights law and international humanitarian law. As a State on whose territory private military and security companies operate, Honduras has a responsibility not only to regulate the activities and services such companies might offer but also to exercise effective supervision and control.

61. Honduras appears to have violated by negligence the principles established in articles 205 and 245 of the Constitution, as well as articles 43 to 45 of the Labour Code, as amended by decree No. 32-2003, which stipulates that the Ministry shall see to it that in the granting of contracts for the provision of services abroad proper steps are taken to ensure that the contracts guarantee the dignity of Honduran workers and do not expose them to harm in any other way.

62. The Honduran authorities, through the Department of Migration and Alien Affairs, decided to treat the military training of Chileans on Honduran territory as a labour issue. They therefore decided:

(a) to declare the presence of the 105 Chileans in Honduras unlawful;

(b) to fine each of them 1,149 lempiras and 15 centavos, informing the legal representative of Your Solutions Honduras accordingly;

(c) to deport the 105 Chileannationals; and

(d) to fine Your Solutions Honduras 6,894 lempiras and 90 centavos. The authorities failed to deport the Chileans to their own country, however, and let the time pass until the Chileans left Honduras in October 2005 as part of the contingent of persons who were going to serve in Iraq.

63. With regard to the 105 Chileans who, after having been recruited by Your Solutions, entered Honduras on tourist visas, 97 of whom received training in Honduras while 8 acted as instructors, and all of whom left the country by plane, presumably illegally via San Pedro Sula and bound for Iraq, the Working Group would like to request the Honduran authorities to look into these events and consider whether this allegation does not in part imply a violation of article 317 of the Criminal Code, on offences which endanger the peace, external security or dignity of the nation, which punishes “*anyone who recruits troops in Honduras to serve a foreign nation, for any purpose whatsoever*”. It also wonders whether there have not been any violations of the relevant provisions of the Honduran Criminal Code relating to arms control, abuse of power, use of weapons, involvement of foreign ex-soldiers in activities of a military nature, and unlawful association.

64. By exporting personnel services to Iraq through the local agent of a private security company, Your Solutions Honduras, Honduras has become de facto a country from which contingents leave for operations in other countries, regardless of the fact that the employer was Your Solutions Incorporated, of Illinois, United States of America. The Working Group wishes to refer to its report to the General Assembly at its sixty-first session (A/61/341, para. 98), in which it recommended that States from which these private companies export military or security services should adopt the legislative instruments needed to set up regulatory mechanisms to control and monitor their activities, including a system of registering and licensing which would authorize these companies to operate and allow penalties to be imposed on them when the norms are not respected.

65. In this context, the Working Group welcomes indications that the Attorney for Human Rights in the Public Prosecutor's Office is preparing to bring charges against government officials who allowed Your Solutions to engage Hondurans to go to Iraq to provide security services and obliged them to fight alongside United States soldiers.

66. What with the Security and Neighbourhood Watch Committees, private security companies operating legally or otherwise, and Honduran nationals' right to form their own security corps up to 100 strong, Honduras now has some veritable "mini-armies" to which the State has ceded some of its monopoly on the use of force, and which are beyond the control of the authorities.

67. What is more, it is claimed by a number of sources that former members of the Armed Forces and the police are the owners of many of these private security companies or hold important positions in them, and in some cases held such posts while still on active service. Such close ties make for a dangerous conflict of interest. Those private security companies that are owned by ex-police or ex-military personnel are also said to be the most reluctant to comply with the registration and oversight regulations. Another cause for concern is the fact that there were allegations regarding the office of the Commissioner appointed to monitor the private security companies, indicating a murky past that required a clean-up operation to be carried out.

68. It is alarming to find that a relatively small number of the weapons supplied to the legally constituted private security companies should have come from the Armoury, implying that other sources of supply exist. It is also disturbing to note that none of the four private security companies described by the Ministry of Security as the most important ones (InterCom, InterSec Security, Walking Hound and Golan Group) is listed in the Ministry's register of legally constituted private security companies. Two of them (InterSec and Golan) are not listed in the public business register either.

69. Another concern is related to the establishment in Honduras of transnational private security companies that allegedly attract not only former members of the Honduran military and police, but also active members of both forces, by offering higher pay, and are also reported to operate outside the proper control and oversight of the appropriate bodies, which poses a threat to national sovereignty. By law, foreign private security companies may operate in Honduras provided they are associated with Honduran companies, but it appears that this requirement is not being met.

70. All these indicators point to an alarming situation in which the State of Honduras has ceded part of its sovereignty in respect of internal security, and apparently continues to do so. In the Working Group's opinion, the State has shown negligence in so delegating its own powers.

71. The Working Group is particularly worried by the measures reportedly taken by the three branches of government on 29 August 2006 in relation to public security policy, which enable some 30,000 private security guards to provide backup to the police and the Armed Forces in fighting crime in Honduras, and which authorized private security guards to take action and even open fire on lawbreakers attempting a robbery. Once again the question must be raised of how far a State can go in handing control of the use of force over to private security companies.

72. The Working Group is also concerned at the campaign of harassment, death threats and slander against the Asociación para una Sociedad Más Justa (Association for a Fairer Society - ASJ) and its project coordinator, journalist Dina Meetabel Meza Elvir, launched by Delta Security Services, a private security company, following the Society's defence of the labour rights of 12 security guards working for Delta who were arbitrarily dismissed, and the support the Society provided to other employees being exploited by State enterprises to which Delta provides private security services.

73. The Working Group wishes to submit the following seven recommendations to the Honduran Government for its consideration:

- (a) It should accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and amend the relevant article of the Criminal Code to take account of the measures contained in the Convention on punishment for the recruitment, use, financing and training of personnel for mercenary purposes;
- (b) It should carry out an in-depth study of the manner in which the agencies and institutions responsible for enforcing the law, the Ministry of Security (National Police and Department of Investigation), the Public Prosecutor's Office, the judiciary and the prison system, operate and perform their duties, and make the necessary changes to guarantee law and order, protect people and property and strengthen the rule of law. In formulating and evaluating this policy, the authorities should draw maximum benefit from the advice of the National Commission for Internal Security (CONASIN), a collegiate body comprising State institutions and representatives of civil society;
- (c) It should strictly apply the provisions of the Police Act and the Regulations on Registration, Monitoring, Supervision and Oversight of Private Security, Investigation and Training Companies and Internal Security Units, which provide that all private security companies should be legally constituted and registered with the Ministry of Security; a full survey of all private security companies operating in the country should be carried out and their arsenals continuously and effectively monitored in accordance with the law; their agents should wear uniforms and bear the insignia of the service company, the corresponding identification bearing the agent's full name and photograph, approved by the police;
- (d) It should ensure the certification of the services provided by the private security companies and the training of their agents, and oversight by the Ministry of Security of entrance tests and recruit training and preparation in accordance with the approved standards. It is recommended that personnel training should include the rules drawn up by the United Nations on the use of firearms and the protection of human rights, such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force by Law Enforcement Officials;
- (e) It should check the reliability of private security company directors, shareholders and executives, as well as all their personnel, to ensure that they have not previously been implicated in human rights violations, and investigate whether there are any conflicts of interest between the posts held by certain members or former members of the military or police and their involvement in private security companies;
- (f) It should set up an authority over the Ministry of Security, either a parliamentary committee or a commissioner, which would have the power to monitor the activities of private security companies and which could receive complaints;
- (g) It should prohibit the export of private military or security services to other countries and, where such export does occur, regulate such services by law through the granting of licences and control mechanisms, as recommended by the Working Group in its report to the United Nations General Assembly at its sixty-first session (A/61/341, para. 98).

Hungary

Introduction

During the period under review, the Independent expert on minority issues visited Hungary from 26 June to 3 July 2006 (please refer to document A/HRC/4/9/Add.2).

89. The Independent Expert makes the following conclusions and recommendations:

- (a) The Independent Expert considers the system of minority self-governments to be a valuable contribution to efforts to enable cultural autonomy for 13 minority groups in Hungary. Care should be taken, however, to make clear that the minority self-governments' system is not seen as a substitute for full and effective participation in the "majority" political apparatus or as a mechanism through which municipal governments may evade responsibility to guarantee fundamental economic and social rights;
- (b) The Government of Hungary should seek to adopt, without further delay, measures to ensure the effective political participation of underrepresented minorities including the Roma in Parliament as provided for in Hungary's Constitution. Full and effective participation in national and regional political structures, as well as Roma representation within key government ministries, is considered essential to future efforts to protect and promote the rights of Roma and other marginalized groups;
- (c) The Government of Hungary should ensure consultation with and the full and effective participation of minorities including the Roma in all decisions that affect them, and in the planning, design, implementation and evaluation of policies and programmes in respect of minority issues;
- (d) The Government should take steps to clarify the relationship between local minority self-governments and municipal "majority" governments to emphasize the primary responsibility that rests with municipal majority governments for meeting the social welfare needs of minority communities, including health care, education, housing and social benefits;
- (e) In recognition of the extreme poverty faced by a disproportionate number of the Roma population, a governmental institution should be established with responsibility for coordinating the work of different ministries and institutions to ensure coherent and coordinated approaches to poverty reduction, particularly with targeted efforts with respect to the Roma minority.

90. The Independent Expert considers that activities of the newly re-elected Government to restructure its previous institutional focus on Roma issues, including dedicated departments in a network of the most relevant ministries, in favour of a broad-based policy to address disadvantaged groups, alongside widespread budgetary cuts and downsizing, will lead to an erosion of the progress made to date on Roma issues. The problems faced by Roma require urgent and focused attention, including affirmative action policies, for a considerable period. The Government of Hungary should review and reverse its policy of institutional reform and restructuring of government departments which is diminishing the focus of attention on Roma issues in key ministries. Roma-targeted policies should be continued and strengthened along with the recruitment of Roma professionals into key government posts relating to Roma issues and policy. This is highlighted as a previous best practice by the Independent Expert.

91. A comprehensive anti-discrimination law and a newly established Equal Treatment Authority to handle complaints were welcomed by the Independent Expert as valuable new additions to Hungary's legal standards and enforcement mechanisms. However, limitations in the powers of the Parliamentary Commissioner for the National and Ethnic Minorities Rights (Minority Ombudsman) and the Authority have circumscribed the impact that these mechanisms have had to date. Further, in the absence of positive legislation placing specific responsibility for implementation of law and policy on identified government bodies, judicial interventions with regard to discrimination will go no further than a finding of violation. Without such positive law, the courts have been reluctant to issue orders for compliance.

- (a) Amendments to existing legal provisions or new provisions should clarify the responsibility of specifically identified government agencies to implement law and policies relating to non-discrimination and equality. Such positive legislation would give licence to the judiciary to elaborate directives (corrective remedies) for rectifying situations found to be in violation of statutes or the Constitution.
- (b) The Equal Treatment Authority should be empowered to impose specific corrective actions upon entities found in violation of the Equal Treatment Act, to impose punitive damages and to vigorously champion the undertaking of affirmative action programmes in all of the public and private sectors. Resources available to the Authority should be increased to match the dimensions of the problems experienced in Hungary.
- (c) The Equal Treatment Authority should be fully independent from the Government, and the role and powers of the Parliamentary Commissioner for the National and Ethnic Minorities Rights (Minority Ombudsman) should be strengthened.

92. Hungary's post-communist constitutional arrangements entrenched significant autonomy for municipal authorities in areas such as education. This has thwarted the national Government's efforts to gain broad-based compliance with national policies on issues such as school desegregation. The Independent Expert noted that the Government must take effective steps to monitor and enforce compliance with national standards and fulfilment of rights of Roma at the municipal level.

93. The situation of multiple discrimination faced by Roma women presents specific challenges, including in the fields of education, employment, health care and housing, which require targeted attention and dedicated resources within the relevant ministries and local and regional authorities. Attention to Roma issues only within the context of a wider policy framework on gender and women's rights issues will fail to meet the needs of Roma women or protect and promote their rights, freedoms and opportunities. The full and effective participation of Roma women is an essential component of Government and civil society efforts to address their issues. The early establishment of an advisory body on Roma women's issues to the Ministry of Social and Labour Affairs should be considered as a means of gaining the views and experience of Roma women and assisting in the planning, design, implementation and evaluation of policy with regard to Roma women.

94. The Independent Expert highlighted particular concern over the situation of Roma in the fields of education and employment, as well as the need to comprehensively address the widespread societal discrimination and anti-Roma prejudice manifest in other sectors relating to social and economic rights. With respect to these sectors, the Independent Expert makes the following recommendations.

Education

95. While the government policy with respect to desegregation must be commended, it is clear that the current approach based on financial incentives is grossly inadequate to match the non-Roma citizen resistance at the municipal level.

- (a) The State must devise effective measures to fulfil its obligation to guarantee compliance with its national anti-discrimination and equal treatment legislation, its Constitution and its international legal obligations to eliminate discrimination. It must put in place effective dissuasive sanctions that attach to relevant identified authorities if compliance is not realized. Consideration should be given to the withdrawal of funding from schools that fail to integrate according to their legal requirements;
- (b) The free-choice system for parents and the ability of schools to freely select or exclude students has been an engine to generate segregation in Hungary's public schools. The Independent Expert welcomes recent initiatives to limit "free choice" in ways that would create and sustain a healthy balance of ethnic diversity in public schools and equal access to the highest possible quality education for all students. Such measures should be maintained and vigorously enforced;
- (c) The Government must also initiate a system of compulsory independent monitoring of schools to ensure that national policies with respect to desegregation are fully implemented at the municipal level.

96. The current practice of labelling young Roma children as mentally disabled without justification based on the child's intellectual capabilities is an unfortunate ruse to create segregated schools and classrooms. The practice is a serious violation of the rights of the child, discriminatory against Roma and has massive negative impact on the lives and future life chances of the targeted children.

(a) This system should be abolished and legal sanction brought against those authorities continuing this practice;

(b) Culturally and linguistically appropriate assessments of learning abilities should be developed by nationally recognized professionals in consultation with professionals from minority communities to replace the current testing process that has resulted in the disproportionate targeting of Roma students for schools and classrooms for the mentally disabled. Students who have already been tested should be reassessed immediately. A national plan, implemented at the local level with full involvement of parents, should be established and independently monitored to ensure that the legitimate special needs of identified students, including Roma, are met in the most appropriate manner;

(c) The Independent Expert greatly welcomes government initiatives such as the "Sure Start" programme, to support Roma and other disadvantaged students from the earliest age. However, urgent attention is required to address the current shortfall in kindergarten places for Roma children particularly in isolated rural settlements;

(d) Initiatives aimed at assisting disadvantaged students, including afternoon schooling and extra-curricula activities are welcome. Such measures should be extended and adequately funded to take into account the serious extent of discrimination faced by the Roma at all levels of the education system, and to assist Roma children to complete secondary education;

(e) An affirmative action policy in regard to access to higher education, including via the Roma scholarship scheme, should be maintained and expanded to encourage Roma to complete higher education courses. Revisions to the financing and administration of the scholarship programmes, including the introduction of "post-financing" have created financial and administrative barriers for some students and should be reviewed;

(f) Roma communities should be encouraged, including through a targeted public awareness campaign and through the social worker system, to realize their full obligations to the education of both boys and girls and to encourage school attendance;

(g) All currently certified teachers and all currently in institutions of teacher training should receive training on pedagogical approaches for ethnically diverse student bodies. Included should be specific training:

(i) In working with children from disadvantaged backgrounds;

(ii) On how to help non-minority children overcome their racial prejudice and resentment;

(iii) On how to deal with hate speech in the classroom.

Employment

97. In order to fashion appropriate policy initiatives, the Government must more proactively confront the important factor of racial discrimination that operates against Roma in the labour market.

(a) The Government should robustly enforce and monitor the provisions of the Equal Treatment and Promotion of Equality Act which requires public organizations, including government offices, of more than 50 employees to establish and implement an equal opportunities plan and to recruit Roma workers. This legislation should be extended to all private and foreign owned organizations.

(b) The equal opportunities plans should include specific goals and timetables for corrective measures and implementation should be proactively monitored and evaluated on an annual basis by the Equal Treatment Authority. Their implementation should be evaluated based on a results framework, that is, to what extent there has been a change in the profile of the workforce. Achieving an ethnically balanced workforce should be the responsibility of the employer.

(c) The Equal Treatment Authority should use a "carrot and stick" approach to motivate employers to comply; using its authority to investigate and impose penalties where they find non-compliance and finding ways to offer technical and financial assistance where that would be an incentive.

(d) Sophisticated employment training programmes that target disadvantaged communities are welcome and should be expanded by government and private employers.

Training should be for skilled work as well as unskilled, and should be paired with job placement services that include placement for people with vocational or secondary school education.

(e) The Government should put a particular focus on outreach to the more than 30 per cent of jobless Roma women for employment training and job placement.

Housing

98. Regarding housing, the Independent Expert makes the following recommendations:

(a) A government-funded rehabilitation programme for Roma housing should be continued and expanded to address the urgent housing needs of many communities.

This scheme should include wider community rehabilitation initiatives, including the provision of contracts to Roma businesses, and the training and employment of community members;

(b) The Government should remedy gaps in current legislation leading to housing rights violations against minorities. The Government should:

(i) without delay, ratify relevant international standards including the Revised European Social Charter;

(ii) provide domestic law recognition of the right to adequate housing; and

(iii) improve domestic law protections to tenants, in particular protections against forced eviction.

99. The Independent Expert also made recommendations regarding other social services:

(a) An independent investigation into the functioning of child protection services should be undertaken to enforce national guidelines and criteria, and effective mechanisms to regulate and monitor child protection services at the local level;

(b) Urgent steps are required to ensure adequate coverage by general medical practitioners, and to address the current serious shortfall in the number of general practitioners, particularly working in disadvantaged and rural Roma settlements and with Roma communities;

(c) Adequate provision of a network of qualified social workers, including via recruitment and training of Roma and those experienced in Roma issues should be undertaken urgently as an essential measure to ensure full knowledge of, and access to, key social and health services and benefits for Roma communities;

(d) A government-sponsored publicity campaign using appropriate media should be conducted as required to assist in the process of raising public awareness of services and benefits particularly to disadvantaged Roma communities.

Collection and use of disaggregated data

100. In terms of collection and use of disaggregated data, the Independent Expert makes the following recommendations:

(a) The collection of data disaggregated by ethnic group as well as along gender lines is recommended as an essential means of revealing the full extent of social and economic problems experienced by different ethnic groups, and to assisting in the development of appropriate and effective policy and practice;

(b) The Government should undertake confidence-building and awareness-raising measures amongst the Roma, and other minority groups, to promote participation in voluntary data collection, including census registration, and allay fears that data collection will be used as a further means of continuing discrimination.

Indonesia

Introduction

During the period under review, the Special Rapporteur on the human rights of migrants visited Indonesia from 12 to 21 December 2006 (please refer to document A/HRC/4/24/Add.3).

65. In the light of the above, the Special Rapporteur wishes to present the following recommendations to the Government of Indonesia.

66. The Government should pursue its efforts towards rapid ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. Ratification of the Convention would provide a useful tool for the protection of migrant workers and create a legal framework within which other regional and bilateral agreements may be signed.

67. The Government should incorporate the Convention and other international human rights and labour standards into national legislation. In doing so, it would be important to involve the various ministries and government bodies concerned, as well as sectors of civil society working to protect human rights.

68. The Government should increase the transparency and monitoring of private recruitment companies, including regulation and capping of recruitment fees, maintenance of publicly available registers of recruitment agencies, a system of regular and unannounced inspections, and imposition of substantial penalties for violations

69. The Government should create a framework to improve employment conditions for migrant workers, including a standard contract that ensures a weekly day of rest, and regulations that require employers to pay most of the costs associated with recruitment and placement. Indonesia should work with receiving countries to make sure these contracts are respected abroad.

70. The Government should put in place mechanisms to blacklist employment agencies that break the law, identify and blacklist abusive employers and screen returning migrant domestic workers, which currently are *in statu nascendi*.

71. The Government should improve coordination at the ministerial level. Given the existing presidential decrees, Indonesia has the required institutional structure for such coordination and concerted efforts are required for implementation.

72. The Special Rapporteur encourages the international community, in particular the specialized agencies of the United Nations, to work with the Indonesian authorities in amending recruitment procedures and immigration laws to comply with internationally accepted standards, and to assist in establishing complaint mechanisms and standard contracts for migrants.

73. As a matter of priority, the Government of Indonesia should review the content of the May 2006 MOU with Malaysia and revise it with a view to enhancing the protection of the rights of migrant workers.

74. The Special Rapporteur recommends that the Indonesian authorities, prior to enacting national legislation on migrants and when engaging in bilateral or other types of agreements, engage in a transparent process with broad public discussion and debate, including with civil society organizations.

75. The Special Rapporteur encourages the Government of Indonesia to increase awareness about the situation of migrants in general by developing mass public information campaigns with a specific focus on educating

both the domestic workers themselves and the labour recruiters about domestic workers' rights. The Government should also spread awareness among potential migrants about their rights when dealing with recruitment agents and create mechanisms to receive complaints.

76. The Government of Indonesia should expand existing pre-departure training programmes in order to empower prospective female migrant workers by educating them about their rights under international law and the labour and penal laws of the countries of destination.

77. The Special Rapporteur requests the Government of Indonesia, in cooperation with donors, to improve and expand the services provided to abuse migrant workers at its consulates abroad. This includes providing adequate staffing to follow up on individual complaints and outreach to the Indonesian migrant worker population. Provision of legal aid, translation services during legal proceedings, medical care and professional psychological health care is also critical. The last is especially important considering the trauma experienced by many abused workers.

78. Finally, the Special Rapporteur recommends further pursuing the recently established policy of tracking and making publicly available data on types of abuses, the number of formal complaints, the time involved in resolving cases, and the final outcome. This would facilitate the collection of detailed information on all abuse cases and complaints made by migrant domestic workers as a way of strengthening the mechanism whereby complaints can be received and investigated to ensure that data on employment agencies found to use unethical or abusive practices are made available to the public.

Italy

Introduction

During the period under review, the Special Rapporteur on racism visited Italy from 9 to 13 October 2006 (please refer to document A/HRC/4/19/Add.4).

66. Given the recent political legacy of racism and xenophobia, the Government needs to recognize the fight against racism, xenophobia and related discrimination as one of its first priorities and confirm at the highest level its determination to fight these phenomena. The Government has the responsibility to ensure that this struggle also takes place at the regional and local levels. It is particularly important to publicly and strongly express disapproval of and combat racist and xenophobic political platforms.

67. The Special Rapporteur welcomes the National Plan of Action on the Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. However, he recommends that the plan: be redefined to include a comprehensive programmatic strategy to address all aspects of racism in every sphere of life and including all groups concerned in compliance with the Durban Declaration and Programme of Action; be the result of a concerted effort by relevant actors, particularly civil society, the concerned communities and political parties; be formally endorsed by the Government as a thorough strategy to fight racism and discrimination; and be based on a comprehensive analysis of the Italian context with regard to racism and xenophobia.

68. The Special Rapporteur stresses the importance of further improving the implementation of the existing legislation combating racism and discrimination. The judiciary and law enforcement agencies require training in the existence and content of the law as well as adequate information on legal protection for the groups concerned.

69. The Government should consider the establishment by law of an independent national institution for the promotion and protection of human rights in accordance with the Paris Principles and for combating all forms of discrimination in a holistic manner, including all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. Pending the establishment of this institution, the Government should consider with urgency the need to increase the level of independence and the human as well as financial resources of the National Office for the Fight against Racial Discrimination.

70. Given the increase in violence in sport, especially football, it is strongly recommended that Italy implement the FIFA guidelines with particular vigilance. The Government should also undertake a review of the regulations of the various federations to harmonize them with the provisions of article 2 of LD 286/98 in order to eliminate discrimination against legally resident non-EU children in sports.

71. The Government should continue to promote the adoption of the legislative reforms that have already been initiated, in particular the Law on Citizenship, the reform allowing migrants to denounce abuse and receive protection, as well as the restoration of more severe punishment for incitement to racial and religious hatred and related crimes. Regarding the citizenship law, it should consider eliminating the economic requirements for the naturalization and acquisition of citizenship and making the obtaining of citizenship by minors dependent on the legal and economic situation of their parents, which may be against the best interests of the child. The Government should ensure that the draft citizenship law does not discriminate against socio-economically vulnerable migrants, refugees, Roma and Sinti by impeding their eligibility to apply for and obtain citizenship on economic grounds, and that it solves the problem of a lack of identification documents traditionally affecting the Roma community, hampering their acquisition of Italian citizenship and their recognition as citizens.

72. The Government should adopt comprehensive legislation on the right to asylum, distinct from the one on immigration, ensuring that gender-related persecution is a ground for the grant of asylum. The Government has the obligation to ensure that the implementation of the immigration legislation does not lead to a violation of the principle of non-refoulement and that no asylum-seeker is sent back to his or her country of origin while awaiting the outcome of appeals.

73. The Government should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and harmonize its national legislation accordingly.

74. The Government should review and amend the Bossi-Fini Law on immigration to replace the security approach and the criminalization of migrants and guarantee the protection of the rights of migrants and their integration in society.

75. The Government should further improve the conditions of the CPTAs and the reception and identification centres to ensure that health care as well as appropriate housing and living conditions are provided. It is particularly important to improve the provision of legal information and counselling. The Government should allow the free and permanent presence of relevant international organizations, in particular UNHCR and the International Organization for Migration, and the access of specialized humanitarian NGOs, particularly in the fields of health and legal aid, to improve the quality of the services currently provided.

76. The Government should combat the exploitation and abuse of migrant workers, particularly in the agricultural sector, as well as their current segregation in the labour market. It should ensure that there is appropriate legislation in place to protect women migrants working as caregivers and domestic workers.

77. The Government, in line with the Palermo Protocol, has the obligation to ensure that migrant women are not forced into prostitution because of their socio-economic vulnerability.

78. The Government should ensure that there are sufficient resources at all levels of government, in particular locally, to assist and guarantee the rights of migrants, asylum-seekers and refugees as well as Roma and Sinti.

79. Italy should recognize the Roma and Sinti as national minorities, and protect and promote their language and culture. The Government should adopt a comprehensive national policy towards these communities, in particular to address their poor housing conditions, lack of documents, high dropouts of their children and their difficulties in accessing employment. Roma and Sinti should be among the priority beneficiary groups of social inclusion policies.

80. The Government should conclude bilateral agreements (*intese*) with those Islamic denominational organizations that have applied and fulfilled the requirements in accordance with the law.

81. The Government should adopt an ethical and cultural strategy guided by the promotion of mutual knowledge and interaction between the different communities. The combat against racism, xenophobia and discrimination should be linked to the long-term construction of multiculturalism by two fundamental elements: firstly, it should be recalled that Italy had traditionally been a country of migration and that Italian communities abroad have been successful in preserving their cultural identity and integrating in the countries of migration; secondly, owing to its history and geography, Italy has had profound human and cultural interactions with the Mediterranean countries. The interaction between the combat against racism, xenophobia and discrimination and the promotion of multiculturalism should lead to a process of constructing a new multicultural identity.

82. The long-term construction of an Italian multicultural identity should be reflected in Italian institutions and guide government policies and programmes, in particular in education, culture and information.

83. The Government could consider launching, with the participation of all media, a process of reflection on the role and responsibility of the media to combat racism, xenophobia and related intolerance and to foster the adoption of a code of conduct in that regard.

Japan

Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea visited Japan from 10 to 14 December 2006 (please refer to document A/HRC/4/15).

51. In 2006 there were three main issues facing Japan with respect to the Democratic People's Republic of Korea: the abductions of Japanese nationals, the missile tests and the nuclear test carried out by the Democratic People's Republic of Korea. The abductions of Japanese nationals by that country are a major concern to the mandate of the Special Rapporteur. A number of Japanese nationals were abducted by agents of that country in past decades, particularly in the 1970s. In 2002, at the first summit meeting between the leaders of Japan and the Democratic People's Republic of Korea in Pyongyang, the latter admitted that his country had been involved in a number of abductions and apologized accordingly. The two sides adopted the Pyongyang Declaration of 2002, premised upon peaceful dialogue and resolution of outstanding disputes on the basis of international law, in particular to help settle the abductions issue.

52. A number of other meetings have followed, but various uncertainties remain. Currently, Japan claims that 17 individuals have been abducted by the Democratic People's Republic of Korea. Five of these individuals have now returned to Japan, but the other cases have not yet been solved, mainly because of intransigence on the part of the Democratic People's Republic of Korea.¹³ Many sources in Japan, particularly the families of the abductees, believe that a number of abducted Japanese nationals are still alive in the Democratic People's Republic of Korea. The feeling is that they should be returned to Japan expeditiously. During the past year, other cases have come to light in regard to the nationals of several other countries abducted by agents of the country in question.

53. The issue of abductions has had enormous impact both nationally and internationally and is interrelated with the call for clarification and responsibility to be assumed by the People's Democratic Republic of Korea. In addition to the work of the Special Rapporteur on the cases, a number of the cases mentioned are being addressed by the Working Group on Enforced or Involuntary Disappearances. Significant United Nations resolutions have been adopted on the issue, most recently by the General Assembly which in resolution 61/174 expressed its concern at the continuing reports of grave violations including "unresolved questions of international concern relating to the abduction of foreigners in the form of enforced disappearance, which violates the human rights of the nationals of other sovereign countries" (para. 1 (b) (v)).

54. In 2006 matters were made more complicated by the various missile and nuclear tests carried out by the Democratic People's Republic of Korea in the face of global condemnation, especially through the adoption by consensus of Security Council resolutions imposing sanctions on the country.

55. A number of Japanese laws are related to the issues concerning the Democratic People's Republic of Korea, in particular the 2002 law concerning support for the victims of abduction by that country. Other laws which cover not only the country in question but also other countries include the Foreign Exchange and Foreign Trade Control Law as amended in 2004; the law on liability for oil pollution as amended in 2004; and the 2004 special measures law prohibiting the entry into Japanese ports of specific ships. Major developments in 2006 in response to the abduction issue included the setting up of the Headquarters for the Abduction Issue, the identification of the seventeenth victim, and the new identification of agents responsible for one of the abductions. In 2006 the "Law concerning measures on the issues of abductions and other human rights violations by North Korean authorities" came into force, underlining Japan's commitment to resolve the abductions issue. The Law provided for highlighting the issue through a national week to deepen awareness of

human rights violations in the Democratic People's Republic of Korea, the issuing of an annual report on the subject, the promotion of an international association between Japanese nationals and other nationalities, and measures to support "North Korean defectors". The question of defectors affects at least two groups: Japanese spouses of nationals of the Democratic People's Republic of Korea, and former Korean residents of Japan who went to live in the Democratic People's Republic of Korea and who now wish to return to Japan. Japanese spouses of former Korean residents in Japan who went to live in the country in question are also considered to be cases of concern. In addition, there may be channels for sheltering others who seek refuge from the Democratic People's Republic of Korea. During his visit to Japan, the Special Rapporteur also participated in one of the events launched under the said Law: the International Conference on Realities of North Korean International Abduction and its Solution, where he met not only the families of Japanese abductees but also those of other nationalities, including the nephew of a Thai national affected by abduction.

56. It will be recalled that at the end of the Special Rapporteur's first visit to Japan in 2005 in connection with his mandate, he issued a humanitarian call based on five key principles (see A/60/306, para. 51). They deserve re-emphasis as follows:

"(a) Responsibility: I call upon the Democratic People's Republic of Korea to respond effectively and expeditiously to Japan's claim that there are a number of Japanese nationals abducted by the Democratic People's Republic of Korea who are still alive [there] and that they should be returned to Japan immediately and in safety;

"(b) Transparency: I call upon the Democratic People's Republic of Korea to ensure reliable and objective verification of its claim concerning the alleged deaths of various Japanese nationals abducted by [its agents], to clarify related ambiguities and discrepancies, and to ascertain whether other Japanese nationals have been abducted by [its agents];

"(c) Family unity: I call upon the Democratic People's Republic of Korea to respect and guarantee family unity/reunification, particularly for those who have suffered from the abductions;

"(d) Accountability: I call upon the Democratic People's Republic of Korea to rectify the discrepancies and enable the victims of abductions and their families to access justice and seek redress effectively and expeditiously from those responsible for the abductions, including bringing to justice those responsible for the acts;

"(e) Sustainability: I call upon the Democratic People's Republic of Korea to resume and sustain dialogue and actions with Japan to solve peacefully the problem of abductions of Japanese nationals by [its agents], to ensure satisfactory resolution of the issue, and to prevent abductions from happening again."

57. This humanitarian call should be reinforced by the following preferred orientations:

(a) Pro-active dialogue: to take steps more expeditiously for satisfactory settlement of the outstanding issue of abductions;

(b) Substantive progress: to show tangible results based on the universal responsibility to protect human rights in compliance with international law;

(c) International solidarity: to support the two countries in their bilateral and multilateral relations to solve the problem peacefully, with the backing of the totality of the United Nations system.

Jordan

Introduction

During the period under consideration, the Special Rapporteur on torture visited Jordan from 25 to 29 June 2006 (please refer to document A/HRC/4/33/Add.3).

64. The Special Rapporteur concludes that the practice of torture is widespread in Jordan, and in some places routine, namely the General Intelligence Directorate, the Public Security Directorate's Criminal Investigation Department, as well as Al-Jafr Correction and Rehabilitation Centre.

65. The total denial of knowledge of torture allegations is astonishing, and points to a lack of awareness and recognition by officials of the nature of the prohibition of torture and ill-treatment, and of its gravity and severity.

66. The Special Rapporteur notes that article 208 of the Penal Code is not in line with the definition of torture contained in article 1 of the Convention against Torture, is not treated as a significant crime but rather as a misdemeanour, and is not subject to penalties appropriate to its gravity. Indeed, in the opinion of officials, minor disciplinary sanctions seem to be adequate and sufficient sanctions for acts amounting to torture. Notwithstanding the shortcomings of this provision and despite the assertions by the Government that the Convention is a binding part of domestic law, it has never been applied because ordinary courts have no competence to invoke it against military, intelligence or public security officers.

67. Taken together, the lack of awareness and recognition, and the absence of any effective legislation to prohibit and criminalize torture creates a system of total impunity that allows torture to be practised in Jordan unchecked.

68. In view of Jordan's position as a Vice-Chair of the United Nations Human Rights Council; the stated political commitment, at the highest levels, to the promotion of a human rights culture in the country and the dissemination of information about these issues at the governmental and public levels; the reaffirmation of the Government's commitment to the Convention against Torture and the human rights treaties to which it is a party; its condemnation of all practices of torture and ill-treatment and its intention to impose the highest penalties on any public official found guilty of torture and ill-treatment; its willingness to continue to cooperate with the Special Rapporteur and with the United Nations human rights mechanisms because of its commitment to developing and promoting human rights; the Special Rapporteur is assured that every effort will be made to implement his recommendations.

69. The Special Rapporteur expresses the sincere hope that as a first step, the Government will demonstrate its commitment by holding accountable security officials who practise, order or condone torture (e.g. the head of counter-terrorism operations of GID, the Director of the Al-Jafr Correction and Rehabilitation Centre, the Deputy-Director of CID, the Directors of Criminal Investigation Section North/South/ Central Jordan and Amman Centre, the two interrogators from Marqa police station identified in the appendix, and the prison official from Juweidah Correction and Rehabilitation Centre identified in the appendix).

70. In its letter of 10 October 2006, the Government informed the Special Rapporteur of a number of developments since his visit:

(1) The Government has tasked the competent institutions with exploring the possibility of amending article 208 of the Penal Code to increase the penalties to be imposed on public servants, including by ruling out any statute of limitations on, or general amnesty for, acts of torture, and to verify that the article meets the requirements of the definition of torture set out in article 1 of the Convention against Torture.

(2) The Public Security Department is investigating a number of the cases of alleged torture mentioned in the report and those responsible for these acts will be punished if found guilty.

(3) The Government will look into the possibility of granting everyone who is arrested the right to ask for a lawyer at the time of arrest.

(4) The Government is contemplating closing Al-Jafr Correction and Rehabilitation Centre, and transferring the inmates elsewhere. The number of prisoners has already been reduced; there are currently not more than 50 inmates at the centre [The Special Rapporteur welcomes recent information that the Government has in fact closed Al-Jafr as of December 2006]. The Public Security Department has drawn up a comprehensive plan for the development and modernization of correction and rehabilitation centres and training of staff. Furthermore, the Government is in the process of creating a special refuge for women held in protective custody.

71. The Special Rapporteur welcomes this information, some of which relates to recommendations made in his preliminary observations following the visit. These developments are evidence of the Government's cooperation to this end. He stands ready to offer his full cooperation and assistance.

72. The Special Rapporteur recommends to the Government that:

Impunity

(a) The absolute prohibition of torture be considered for incorporation into the Constitution;

(b) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with severe (long-term) prison sentences;

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

(d) The special court system within the security services - above all, police and intelligence courts - be abolished, and their jurisdiction be transferred to the ordinary independent public prosecutors and criminal courts;

(e) An effective and independent complaints system for torture and abuse leading to criminal investigations be established;

Safeguards

(f) The right to legal counsel be legally guaranteed from the moment of arrest;

(g) The power to order or approve arrest and supervision of the police and detention facilities of the prosecutors be transferred to independent courts;

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

(i) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;

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

(k) The maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time at which the family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer;

- (l) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present;
- (m) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;
- (n) Any public official found responsible for abuse or torture in this report, including the present management of CID and GID, certain police or prison officials involved in torture or ill-treatment, as well as prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty, and prosecuted; on the basis of his own (very limited and short-time investigations) the Special Rapporteur urges the Government to thoroughly investigate all allegations contained in the appendix with a view to bringing the perpetrators to justice;
- (o) Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, as well as adequate medical treatment and rehabilitation;
- (p) The declaration be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;

Conditions of detention

- (q) Non-violent offenders be removed from confinement in pretrial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement);
- (r) Pretrial and convicted prisoners be strictly separated;
- (s) The Criminal Procedure Code be amended to ensure that the automatic recourse to pretrial detention, which is the current de facto general practice, be authorized by a judge strictly only as a measure of last resort, and the use of non-custodial measures, such as bail and recognizance, are increased for non-violent, minor or less serious offences;
- (t) Due to extremely harsh prison conditions and routine practice of torture, the Al-Jafr Correction and Rehabilitation Centre be closed without delay;
- (u) Females not sentenced for a crime but detained under the Crime Prevention Law for being at risk of becoming victims of honour crimes be housed in specific victim shelters where they are at liberty but still enjoy safe conditions.

Prevention

- (v) Security personnel shall undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;
- (w) Security personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve;
- (x) The Optional Protocol to the Convention against Torture be ratified, and a truly independent monitoring mechanism be established - where the members of the visiting commissions would be appointed for a fixed period of time and not subject to dismissal - to visit all places where persons are deprived of their liberty throughout the country;
- (y) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security personnel, legal professionals and the judiciary.

International cooperation

73. The Special Rapporteur recommends that relevant international organizations, including the OHCHR and UNDP, be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

Kenya

Introduction

During the period under review, the Special Rapporteur on indigenous people visited Kenya from 4 to 14 December 2006 (please refer to document A/HRC/4/32/Add.3).

90. In view of the above, the Special Rapporteur makes the following recommendations:

A. Recommendations to the Government

Legal recognition and political participation

91. The rights of indigenous pastoralist and hunter-gatherer communities to their lands and resources, effective political participation and distinct cultural identity should be constitutionally recognized. Specific legislation should be correspondingly enacted, including affirmative action where necessary.

92. The Government should take all the necessary steps, in consultation with indigenous peoples in the country, to ensure prompt ratification of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. It should also promote the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly and, through Parliament, ensure the incorporation into domestic law of these instruments.

93. The national census should identify pastoralists and hunter-gatherers as distinct indigenous communities and provide disaggregated data in order to understand their specific needs and facilitate the elaboration of appropriate public policies.

94. The Government, through the Electoral Commission of Kenya, should regulate the nomination of Members of Parliament by political parties, in particular to ensure adherence to the constitutional provisions on the need to take into account special interest groups in those nominations.

95. Existing districts and constituencies should be redefined in order to provide for a more effective representation of the interests of smaller indigenous communities, particularly in cases where they are divided into several administrative units, in line with section 42 of the Kenya Constitution.

96. The current procedures for granting national identity cards should be reviewed to remove obstacles affecting indigenous communities, and such identity documents should be provided to members of nomadic pastoralist and forest communities who still lack them. Land and resource rights

97. The Government should fully implement the recommendations of the Ndungu report, giving particular attention to the rights of indigenous and other marginalized communities to their lands and natural resources. The draft National Land Policy should be adopted, retaining the sections on the land rights of pastoralists and hunter-gatherers, and fully implemented.

98. Indigenous communities should be consulted prior to the exploration for and exploitation of natural resources on their traditional lands, and should receive an equitable share of benefits obtained from such activities through participatory resource management. They should be fully compensated for any adverse environmental impact on their land, resources and traditional livelihoods resulting from development projects and other economic activities.

99. Efficient mechanisms should be established to address historical injustices and settle current land and natural resource disputes resulting from dispossession of lands traditionally owned by pastoralists and hunter-

gatherers. These mechanisms should include the possibility of revocation and rectification of irregular titles, as well as the restitution of lands and/or effective compensation to the affected communities.

100. Stronger guarantees against the dispossession of indigenous communal lands should be incorporated in the land legislation, allowing for room to challenge fraudulent first registrations in the courts. The Government should also ensure that no adjudication or setting apart of trust lands or unalienated government lands should be allowed without the free, prior and informed consent of local communities.

101. The policy of privatization of communal ranches should be carefully revised with the participation of the communities concerned, in order to provide permanent protection and support to communal lands and group ranches and counteract the negative consequences of the “willing seller-willing buyer” practice, particularly in Narok and Kajiado Districts.

Forest areas

102. The rights of indigenous hunter-gatherer communities (particularly the Ogiek in Mau Forest) to occupy and use the resources in gazetted forest areas should be legally recognized and respected. Further excisions of gazetted forest areas and evictions of hunter-gatherers should be stopped. Titles derived from illegal excision or allocation of forest lands should be revoked, and new titles should only be granted to original inhabitants. Illegal commercial logging should be stopped.

Environmental rights

103. The Government’s ASAL policy should include measures to restore the environment and prevent further degradation in pastoralist areas. In particular, it should cooperate with other actors in the elimination of the prosopis weed in the Il Chamus community.

104. The authorities of the Tana River dams should ensure that no water release takes place without previously informing and consulting with the Munyayaya and other communities living along the river. Any damage on indigenous communities’ lands resulting from the operations of the dams should be fully compensated.

105. The State should promote the complete removal of landmines and other military ordnance in pastoralist areas, and victims should be fully compensated.

106. Existing legislation should be amended to ensure the rights of local indigenous communities to access the natural resources in protected areas in their traditional territories. Conservation and the rights of indigenous peoples should be balanced in accordance with the recommendations of the fifth World Parks Conference held in Durban, South Africa in 2003.

107. Pastoralist and hunter-gatherer communities should be involved in decisions concerning the management of and benefits derived from protected areas, game reserves and national parks. They should also be compensated for any loss derived from the creation of such areas, including any human and material losses derived from wildlife activities in the vicinities of these areas.

108. The Government should aim at a friendly settlement in the case of the Endorois before ACHPR, leading to the establishment of a system of co-management between the authorities and the local communities in the Lake Bogoria Game Reserve.

Access to justice

109. The Government should fully implement the recommendations of the “Mutua Task Force” and KNCHR, and establish a Truth, Justice and Reconciliation Commission with the power to investigate and provide redress and compensation to the victims of gross human rights violations. Special attention should be paid to

the investigation of the Wagalla and other massacres, the compensation of the victims and the punishment of the perpetrators.

110. The Government should ensure that all allegations of torture, rape and other human rights violations are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators. The rights of human rights defenders and indigenous activists should be specifically protected.

111. The national conflict resolution mechanism should include leaders from indigenous peoples' communities and be linked to local conflict resolution mechanisms.

112. Indigenous communities should have the legal right to represent their interests in cases affecting their collective rights.

Social services

113. The Government should adopt the current draft ASAL policy and fully implement it with the participation of pastoralist communities.

114. Indigenous communities should participate actively in the design, implementation and evaluation of the poverty reduction strategy and the realization of the Millennium Development Goals.

115. Affirmative action should be applied to promote education for indigenous children at all levels, particularly for indigenous girls. Free boarding and mobile schools should be an integral part of the free universal primary education programme. More appropriate educational curricula should be devised, taking into account indigenous peoples' distinct ways of life.

116. Efforts should be made to protect the languages of the smaller indigenous communities from extinction, by appropriate educational, linguistic and cultural policies.

117. Indigenous peoples, particularly indigenous women and girls, should be ensured access to adequate health services. The system of mobile clinics in pastoralist areas should be reinforced, and the use of traditional medicine and health-related knowledge should be encouraged and legally recognized.

Women's rights

118. The Government should reinforce its efforts to achieve the effective eradication of FGM in all communities, by helping promote culturally appropriate solutions such as alternative rites of passage and supporting women's organizations in these tasks.

119. The Government should review existing discriminatory laws and regulations affecting the property rights of indigenous women, particularly those of widows and divorced women.

B. Recommendations to the Kenya National Commission on Human Rights

120. KNCHR should establish a specialized programme dealing with the rights of pastoralists and hunter-gatherers and other minority communities, promote wider knowledge of their human rights situation and strengthen cooperation with their organizations.

121. KNCHR should play a key role in the monitoring of the implementation by all relevant actors of the recommendations made by the Special Rapporteur in this report.

C. Recommendations to indigenous communities and organizations

122. Existing customary laws and practices should be revised to eliminate discrimination against women, especially with regard to their property rights and harmful traditional practices, and ensure their full participation in decision-making at the community and national levels.

123. Indigenous communities and organizations should renew efforts to find constructive solutions to existing conflicts with other communities, taking into account customary practices, the principles of transitional justice and the respect for human rights.

124. Indigenous peoples' organizations are encouraged to develop concrete strategies for data collection, research and documentation to support their advocacy work both at the national and international levels.

D. Recommendations to civil society and political parties

125. Political parties should take a stand in favour of the recognition of indigenous peoples' communities and their rights in the constitutional review, legislative reform and policymaking.

126. Members of the Pastoralist Parliamentary Group are encouraged to revitalize their activities in order to build a common agenda and strategy in favour of pastoralist and other indigenous communities.

127. NGOs and donors should strengthen their relations with indigenous communities, support their development initiatives and promote a better understanding of their demands and aspirations within Kenyan society.

E. Recommendations to the international community

128. The international agencies and programmes in Kenya should take into account the needs and rights of indigenous peoples and establish specific programmes for them. They are encouraged to engage with UNIPACK and other pastoralist and hunter-gatherer networks and organizations in the formulation and implementation of these policies.

129. International agencies and financial institutions should ensure that all projects in indigenous areas respect the principle of free, prior and informed consent of the local communities. Any negative impact caused to these communities as a result of these projects should be duly accounted for and compensated.

130. ILO should further its efforts to promote the rights of indigenous communities in Kenya under the provisions of Convention No. 169 and other fundamental international labour standards.

F. Recommendations to the academic community and the media

131. The country's universities and research centres should establish focal points for research on and teaching about the needs and rights of indigenous peoples in Kenya.

132. The written press and the audio-visual media should avoid any discriminatory or biased reporting on indigenous peoples in Kenya and provide space for their concerns and information that promotes their ways of life and cultural identities.

Lebanon

Introduction

During the period under review, the Special Rapporteur on the right to food visited Lebanon from 11 to 15 September 2006 (please refer to document A/HRC/2/8).

31. The right to food and water is protected under international human rights and humanitarian law. Given the essential nature of food and water to the survival of civilian populations, these are central obligations in time of war, as well as in time of peace. In the light of the findings described above and the international obligations of the parties involved in the war, the Special Rapporteur makes the following conclusions and recommendations:

- (a) Violations of the right to food under international human rights and humanitarian law should be further investigated, including to determine whether they constitute grave breaches of the Geneva Conventions and Additional Protocol I and, possibly, war crimes under the Rome Statute of the International Criminal Court;
- (b) The Commission of Inquiry established by the Human Rights Council should also investigate violations of the right to food and recommend measures for awarding reparation and determining accountability;
- (c) The International Humanitarian Fact-Finding Commission established in accordance with Additional Protocol I should be accepted by the Government of Israel and the Government of Lebanon to investigate violations of the right to food under international humanitarian law;
- (d) Individuals should be held responsible for violations of the right to food and water. The United Nations High Commissioner for Human Rights in her statement to the Human Rights Council at its second special session noted that when legal obligations regulating the conduct of hostilities are violated, personal criminal responsibility may ensue, particularly for those in a position to command and control;
- (e) International law regarding access for humanitarian agencies providing food and water to civilian populations must be respected at all times;
- (f) According to international jurisprudence,⁴⁹ the Government of Israel should be held responsible under international law for any violation of the right to food of the Lebanese civilian population. Under international law, the Government of Israel has the obligation to ensure that all victims of violations of the right to food receive adequate reparation and compensation for the losses suffered during the war as well as for ongoing losses due to the disruption of livelihoods;
- (g) Under international law, the Government of Israel has the obligation to reimburse the Government of Lebanon for the clean-up of the oil spill from the Jiyeh power plant and the fisherfolk for their economic losses caused by the spill;
- (h) The Government of Lebanon, in cooperation with United Nations agencies and international and national NGOs, should design programmes to support all those whose livelihoods have been devastated by the war, especially farmers, agricultural labourers and fisherfolk. The right to food and water must be a central part of the reconstruction effort;
- (i) The Government of Lebanon, in cooperation with United Nations agencies and NGOs, must ensure that transitional measures are available to guarantee the access to food for all vulnerable groups and that the right to food is not compromised while longterm measures are put in place. This will require the provision of food assistance in the short term, but in the longer term it will require the re-establishment of livelihoods;
- (j) The Government of Lebanon, with agencies and donors, must ensure that everyone has access to adequate quantities of clean drinking water. Reconstruction of water wells and water distributions networks must be a central priority;
- (k) The Government of Lebanon should institute a moratorium on debt for small-scale farmers and fisherfolk to reverse the downward cycle of debt and impoverishment that will be caused by the loss of this year's harvest;
- (l) The Government of Lebanon, with UNWRA, should ensure that unregistered "gatherings" of Palestinians refugees are recognized as official camps and can be provided with all the basic services by the relevant authorities as well as by the Agency;

(m) The Government of Lebanon, in cooperation with donors, should also prioritize reconstruction of agricultural infrastructure, including irrigation networks;

(n) The Government of Lebanon, with bilateral and multilateral donors, should accelerate the clearing of cluster bombs from agricultural fields. The Government of Israel should provide the full details of its use of cluster munitions in order to facilitate the destruction of the UXO and the clearing of affected areas.

Liberia

Introduction

During the period under review, the Independent Expert on the situation of human rights in Liberia visited Liberia from 19 to 26 February and 12 to 23 November 2006 (please refer to document A/HRC/2/6).

37. The independent expert makes the recommendations that follow in the paragraphs below to the Government of Liberia, the donor community and the Office of the High Commissioner for Human Rights.

38. The strengthening of the judicial system is crucial to the promotion and protection of human rights and to ending impunity. In this regard, the earlier recommendation of engaging judges and prosecutors from outside Liberia, including as mentors, is still very pertinent. OHCHR, the African Union, the Economic Community of West African States (ECOWAS), the European Union (EU), United Nations agencies and UNMIL must continue to talk to the Government, the Chief Justice, and all stakeholders to work towards the realization of this recommendation.

39. An earlier recommendation to the Government of the United States of America to offer scholarships to qualified Liberians to study law and for postgraduate courses is pertinent. In this regard, affirmative action, as reflected in article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, should be implemented in Liberia to attract more females into the legal profession. At the same time, the international community is being requested to assist in improving the law faculties of universities in Liberia.

40. OHCHR should provide more funds through technical cooperation services for the re-establishment of the Human Rights Unit in the Ministry of Justice.

41. OHCHR should provide more funds to conduct workshops on international human rights instruments for the legislature, judicial service and all law-enforcement agencies.

42. OHCHR, United Nations agencies and international NGOs should support the Women and Children's Unit of LNP.

43. OHCHR should provide funds to enable sector ministries and relevant civil society organizations to respond regarding the State party of Liberia's obligation to report on treaties ratified.

44. The Government of Liberia, OHCHR, ECOWAS, AU and other stakeholders should seriously consider making all assistance available so that proper implementation of the Truth and Reconciliation Commission Act might be achieved.

45. All stakeholders, having learnt from the experience of the non-performance of the Commissioners of TRC, should hasten the process of the establishment of the Independent Human Rights Commission.

46. OHCHR and the donor community should help the Government of Liberia establish a mission in Geneva.

47. The Government of Liberia should consider proposing an amendment to the Constitution allowing all international treaties to become part of domestic law, i.e. move from a dualist to a monist system.

48. The repeal of discriminatory and offensive legislation such as the "Hinterland Regulations" be immediately tabled by the Legislature.

Undertakings/suggestions

49. Finally, commitments and suggestions made by the independent expert include that:
- She would intervene with the Swiss authorities in relation to the establishment of a Liberian Mission in Geneva and will seek advice from other countries that would be prepared to support the establishment of such a presence;
 - The independent expert would intervene with the Government of Ghana regarding the resettlement of Liberian refugees in Ghana;
 - The Government of Liberia should request the United States of America to offer scholarships to law graduates so the legal training and the judicial system can be strengthened;
 - UNMIL should clarify with local authorities the status of any cases involving allegations of sexual misconduct against Liberian nationals by United Nations peacekeepers, staff members or any others contracted or subcontracted to carry on work on its behalf;
 - TRC should request the assistance of UNMIL to disseminate explanatory information;
 - The offer of the Finnish delegation, made during the third session of the Human Rights Council, in relation to the provision of psychological support and assistance to TRC, should be taken up;
 - The international community should move towards the creation of a fund for victims of rape and sexual violence in Liberia.

Maldives

Introduction

During the period under consideration, the Special Rapporteur on freedom of religion or belief visited Maldives from 6 to 9 August 2006 (please refer to document A/HRC/4/21/Add.3).

Historical and political context

54. The Special Rapporteur was the first special procedures mandate-holder to carry out a country mission to the Maldives. She welcomes the steps the Government has taken to engage with international human rights mechanisms and is particularly pleased that the Government has issued a standing invitation to all special procedures in April 2006. She looks forward to sustained cooperation between the Government and the various special procedure mandates.

55. She appreciates the Roadmap for the Reform Agenda and sincerely hopes that it will be implemented effectively. She emphasizes the interdependency of all human rights and notes that freedom of religion or belief can only be truly respected in a context in which other human rights are also respected. The implementation of a number of elements of the Reform Agenda, including strengthening the system of governance, enhancing the independence of the judiciary, enhancing the role of the media and strengthening civil society, will also be vital contributories to ensuring protection of the right to freedom of religion or belief.

56. Whilst welcoming the fact that national unity and harmony are highly prized in the Maldives, she notes that the concept of national unity appears to have become inextricably linked to the concept of religious unity, and even religious homogeneity, in the minds of the population. She notes that religion has been used as a tool to discredit political opponents and that political opponents have publicly accused each other of being either Christians or Islamic extremists, both of which have proved to be damaging accusations in a country in which religious unity is so highly regarded. She emphasizes that political actors across the board must refrain from using religion as a tool to discredit opponents. She considers that the Government must take the lead in raising awareness about the issue of freedom of religion or belief, and human rights in general, and she notes the potential role of the Human Rights Commission in this regard. She stresses that efforts to improve respect for freedom of religion or belief can only be effective if carried out in full consultation with the population as a whole, and as such she encourages the Government to translate her report, and to disseminate it throughout the country.

57. The Special Rapporteur notes that many of her interlocutors expressed their concern about the potential impact of increasing religious extremism in what has been a traditionally moderate country. In this regard, she notes that the extensive de jure and de facto restrictions on religious rights are not easy to reconcile with a moderate approach to issues of religion. She is also concerned that despite the fact that the Maldivian economy is largely dependent on income from tourism, numerous steps have been taken to restrict contact between tourists and Maldivian citizens, apparently in an effort to limit the impact of other cultures on the local population. Relevant international standards

58. The Special Rapporteur welcomes the Government's decisive action in response to the public statement issued by the Supreme Council for Islamic Affairs, which purported to ban the Universal Declaration of Human Rights (UDHR). However, she regrets that the Supreme Council continues to hold the view that article 18 of the UDHR contradicts the Constitution of the Maldives and the Islamic faith. She encourages the Human Rights Commission to continue its efforts to translate and disseminate international human rights standards, and calls upon the Government to lend the Human Rights Commission its full support in this endeavour.

59. She welcomes the recent accession of the Maldives to the International Covenant on Civil and Political Rights (ICCPR), although she regrets that the Government has felt it necessary to enter a reservation to article

18 on freedom of religion or belief. While she understands that freedom of religion or belief is particularly sensitive in the Maldivian context, she does encourage the Government to keep the reservation under review and to revisit it in the near future. She also hopes that the Government will review reservations that are currently in place in relation to articles 14, 20 and 21 of the Convention on the Rights of the Child and article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Relevant constitutional provisions

60. The Special Rapporteur encourages the members of the Special Majlis to give serious consideration to including the right to freedom of religion or belief in the new draft of the Constitution. This right should not be limited to citizens of the Maldives, but should be extended to all persons in the Maldives. She takes this opportunity to underline that the designation of Islam as the State religion of the Maldives does not require all citizens to adhere to that religion alone. Indeed, she notes that there are numerous countries, including in the South Asia region, which have adopted a State religion, but do not require their citizens to adhere to that religion.

Freedom to adopt, change or renounce a religion or belief

61. The Special Rapporteur regrets legislative provisions requiring all Maldivians to be Muslim and hopes that legislators will review these provisions to ensure respect for the right to adopt one's own religion or belief. While she is aware that almost all Maldivians are indeed Muslims, she is concerned that these legislative provisions could result in actual violations of the right to adopt one's own religion or belief. She would like to reiterate the words of the first mandate-holder, Angelo Vidal d'Almeida Ribeiro: "Mankind has a right to diversity, to the freedom of thought, conscience and belief, without limits being imposed on anyone, except in cases where restrictions to their exercise are prescribed." (E/CN.4/1993/63, para. 53.)

62. She is also concerned by reports that individuals who are suspected of having converted away from Islam have been subjected to coercion in detention to persuade them to reaffirm their belief in Islam. She reminds the Government that the right to freedom of religion or belief includes the right to be free from coercion and encourages it to ensure that nobody is detained with the purpose of coercing them to reaffirm their belief in Islam. She welcomes the draft Criminal Code, which seeks to codify Maldivian criminal law, including sharia law. The draft Criminal Code does not criminalize apostasy and the Special Rapporteur strongly encourages legislators to adopt the pertinent provisions of the draft Criminal Code in its current form.

Freedom to manifest one's religion or belief

63. The Special Rapporteur is disturbed by provisions of the Law on Religious Unity, which criminalize any action or form of expression intended to disrupt, jeopardize or disunite social and religious order and harmony, and considers that the law has the potential to limit the manner in which people choose to manifest their religion or belief. She considers that the law may fail to satisfy the requirement that any limitations on the right to manifest one's religion or belief must be prescribed by law and must be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. She also considers that the restrictions provided for in the above-mentioned law, as well as in the Law on Prohibited Items in Maldives and the Law on Associations, may well be disproportionate and go beyond what would be considered legitimate within the framework of international human rights law.

64. The Special Rapporteur notes that freedom of expression, as articulated by article 19 of the ICCPR, includes the freedom to express ideas and opinions about issues of religion or belief. In some instances, the expression of such ideas may also constitute part of an individual's right to manifest his religion or belief. Accordingly, she is concerned that people are prevented, both by the Law on Religious Unity and other legislative provisions, and as a result of social pressure, from expressing their views about issues relevant to

religion or belief. Indeed, she observed that many people, ranging from everyday citizens, journalists and parliamentarians, exercise self-censorship on issues of religion or belief.

65. While she recognizes the desire to maintain religious harmony in the country, she notes that the role of the Supreme Council in licensing preachers and centrally drafting their sermons does have the potential to violate the right of individuals to manifest their religion or belief. In this regard, she is particularly concerned by reports that at least one preacher has been arrested and lost his licence for deviating from the centrally drafted set texts. In this regard she is also concerned by the role that the Supreme Council plays in vetting domestically produced and imported literature on Islam. In addition, she is concerned that there also appears to be limited access to the main religious texts.

Discrimination on the grounds of freedom of religion or belief

66. The Special Rapporteur is concerned that constitutional provisions, restricting eligibility to vote and hold certain public offices to Muslims, constitute de jure discrimination on religious grounds. She is aware that almost all Maldivians are indeed Muslims and that as such, the presence of these discriminatory provisions is unlikely to result in many actual instances of discrimination. However, the very presence of these provisions in the Constitution contradicts the treaty obligations of the Maldives, and particularly article 2, paragraph 1, in combination with article 25 of the ICCPR, as well as article 26 of the ICCPR.

67. She is also concerned by legislation limiting eligibility for certain public posts to Muslims, including the Human Rights Commission Act, and by the Citizenship Law, which stipulates that only Muslims can apply for Maldivian citizenship. She encourages legislators to consider introducing amendments to these pieces of legislation, to bring them into compliance with the treaty obligations, particularly under article 26 of the ICCPR. She notes that according to article 4, paragraph 2, of the 1981 Declaration, all States must make all efforts to enact or rescind legislation where necessary to prohibit discrimination on the grounds of religion or belief.

Freedom of religion or belief of vulnerable groups

Migrant workers, their families and other foreigners

68. The Special Rapporteur is extremely concerned by the current limitations placed on the right of migrant workers and other foreigners to manifest their religion or belief. She notes that these limitations are implemented as a matter of practice, and not as a matter of law. As such, they may fail to comply with the requirement in article 18, paragraph 3 of the ICCPR that any limitation on the right to manifest one's freedom of religion or belief must be prescribed by law. Furthermore, the Special Rapporteur questions to what extent these limitations are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, as set out in article 18, paragraph 3, of the ICCPR and article 1, paragraph 3, of the 1981 Declaration.

69. The Special Rapporteur encourages the Government to give serious consideration to amending the current practice to enable non-Muslims to manifest their religion or belief in a manner consistent with human rights law. She recognizes that there is a notable amount of public opposition to any changes in this regard, and as such she would encourage the Government to make serious efforts to raise awareness about freedom of religion or belief. She also strongly recommends that the Government consider acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which contains important provisions on the right to freedom of religion or belief, including the right to manifest one's belief, in public or in private, of migrant workers and their families.

Persons under any form of detention

70. The Special Rapporteur expresses her concern that the right to freedom of religion or belief of foreign prisoners is not being fully respected, including by limiting their ability to manifest their religion through prayer and worship and failing to provide them with a religiously sensitive diet. In this regard she notes paragraph 8 of general comment No. 22 (1993) of the Human Rights Committee, which provides that, “Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.” Accordingly, she calls upon the Government to develop, and ensure the immediate implementation of, a set of regulations, which could be included as an integral part of the prison rules, to ensure that persons under all forms of detention have the right to manifest their religion or belief in accordance with relevant international standards, including rules 41 and 42 of the Standard Minimum Rules for the Treatment of Prisoners.

Women

71. The Special Rapporteur expresses her concern about the seemingly widespread willingness to equate the wearing of the headscarf with increasing Islamic extremism and emphasizes that there can be a wide variety of reasons behind a woman’s choice to wear the headscarf. Nevertheless, the Special Rapporteur noted with appreciation that women were able to wear headscarves without hindrance, including civil servants. At the same time she notes that every woman must have the freedom to choose how she wishes to manifest her religion or belief, and as such registers her concern about reports of increasing pressure being placed upon women to wear headscarves, including in State-controlled media.

Mongolia

Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea visited Mongolia from 13 to 23 December 2006 (please refer to document A/HRC/4/15).

64. Given the strategic position of Mongolia in North-East Asia, the country has adopted a policy of friendly relations with its neighbours, including those of the Korean peninsula. The main impact of the human rights situation in the Democratic People's Republic of Korea on Mongolia in recent years has been the issue of those who have fled from the former to seek the protection of the latter. This is influenced by both humanitarian concerns and national security considerations. It will be recalled that the 1992 Mongolian Constitution provides an avenue for the grant of asylum for those seeking refuge as follows (art. 18): "(4) Aliens or stateless persons persecuted for their convictions or for political or other activities pursuing justice, may be granted asylum in Mongolia on the basis of their well-founded requests." This was further elaborated in the 1993 Mongolian law on the legal status of foreign citizens. There is a delicate balance to be established with national security concerns.

65. UNHCR has been present in the country since 2001. While the collaboration between that Office and the national authorities has been developing concretely, some sources met by the Special Rapporteur felt that there was more room for the national authorities to cooperate with that agency, especially in the sharing of information to ensure transparency. Recent indications of logistical and technical support to be given by the Office to Mongolia are also welcome.

66. The current position of the Mongolian authorities is to treat those escaping from the Democratic People's Republic of Korea as humanitarian cases, although the national law tends to refer to them as "border-crossers". The policy abides by the international principle of non-refoulement which prohibits the sending back of refugees (or deportation) to their country of origin or other territories where there is a threat of persecution. In reality, these persons are in transit in Mongolia, as they later depart for another country for long-term settlement. That position on the part of the Mongolian authorities should be commended and supported for its humanitarian stance which bodes well for the country's commitment to democracy and human rights. The country also has various mechanisms, such as the National Human Rights Commission of Mongolia, which help to provide checks and balances to promote and protect human rights, in addition to a vibrant civil society and a variety of media.

67. There is the question of accession to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The authorities in Mongolia are in the process of consulting various agencies on the issue. A positive consequence of accession would be that it would help to set clear benchmarks for dealing with those who seek refuge, and this would result in a system providing greater clarity and transparency in relation to refugee status. It would need to be enhanced by international support to shoulder the task together in the quest for durable solutions, including resettlement in other countries where appropriate, bearing in mind the limited resources which Mongolia may be able to provide as a developing country.

68. For the future, key directions for Mongolia include the following:

- (a) Sustain its humanitarian policy and practice towards those who seek refuge in the country;
- (b) Protect and assist refugees, bearing in mind various vulnerable groups such as women and children and the need to cooperate closely with UNHCR;
- (c) Ensure that the conditions under which those who seek refuge are temporarily maintained are transparent and open to access by that United Nations agency;

(d) Continue to abide by international human rights law and international law concerning refugees, ensure effective implementation measures and build capacity among law enforcers, including by means of training on human rights and refugee law for border officials, and raise awareness among the public to nurture sympathy and understanding for those who seek refuge;

(e) Accede to the 1957 Convention and its 1967 Protocol, and adjust the country's laws, policies and mechanisms accordingly, with key support from and in cooperation with UNHCR and other United Nations agencies, coupled with effective implementation measures.

69. The international community should complement the above by providing relevant support as part of international solidarity, bearing in mind the responsibility of the State of origin (of those who seek refuge elsewhere) to address the root causes of outflows and the need for all countries to abide by international human rights and refugee law, whether as source, transit or destination countries.

Morocco

Introduction

During the period under review, the Special Rapporteur on the right to education visited Morocco from 27 November to 5 December 2006 (please refer to document A/HRC/4/29/Add.2).

16. The Special Rapporteur recommends the authorities go beyond the current parity scheme, mainly focusing on ensuring equal access of girls and boys to school, to include a gender perspective and the promotion of the principle of equal rights for men and women throughout the education system. The Special Rapporteur noted the strategy of the Ministry of Education to involve civil society through the establishment of partnerships with local associations and NGOs in the education sector, and an apparently excessive promotion by the authorities of private education. The Special Rapporteur stressed that the State, and not local associations, nor the private sector, is responsible for guaranteeing the realization of the right to education.

17. The Special Rapporteur will submit his final report and recommendations on his visit to Morocco to a future session of the Human Rights Council.

Myanmar

Introduction

During the period under review, the Special Rapporteur on the situation of human rights Myanmar submitted a report to the Human Rights Council (please refer to document A/HRC/4/14).

87. The Special Rapporteur's recommendations made in earlier sections of the present report, as well as in his previous reports, remain valid in view of the prevailing situation in Myanmar. For the last time, the Special Rapporteur would like:

- (a) To appeal to the Government of Myanmar to free all political prisoners and put an end to harassment and persecution of NLD members and representatives of ethnic groups;
- (b) To encourage the Government of Myanmar to resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups, to complete the drafting of the Constitution;
- (c) To recommend that, given the magnitude of human rights abuses, the Government of Myanmar subject all officials who commit these acts to strict disciplinary control and punishment and put an end to the culture of impunity that prevails throughout the country;
- (d) To call upon the Government of Myanmar to put an end to the criminalization of the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives;
- (e) To encourage the Government of Myanmar to seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles;
- (f) To urge the Government of Myanmar to take steps to improve conditions of detention;
- (g) To urge the United Nations and the international community to respond to the situation of armed conflict in eastern Myanmar, where civilians are being targeted and where humanitarian assistance to civilians is being deliberately obstructed;
- (h) To call on the Government of Myanmar to authorize access to the affected areas by the United Nations and associated personnel, as well as personnel of humanitarian organizations, and guarantee their safety, security and freedom of movement;
- (i) To encourage the Government of Myanmar to ensure a mutually agreeable operating environment for humanitarian agencies in accordance with the guiding principles provided by the United Nations Country Team on 7 March 2006;
- (j) To call on the Government of Myanmar to end illegal land confiscation in Myanmar and to urge the Government to ensure that land use and ownership issues are addressed in the Constitution;
- (k) To call upon the Government of Myanmar to respect its obligation under international humanitarian law to protect civilians from armed conflicts;
- (l) To urge the Government of Myanmar to implement ILO recommendations with a view to implementing practical measures to end forced labour;
- (m) To encourage the Government of Myanmar to put an end to the recruitment of child soldiers;
- (n) To encourage the Government of Myanmar to take steps to finalize its second periodic report to the Committee on the Elimination of Discrimination against Women that was due on 21 August 2002, and to work with civil society, the United Nations system and the Committee on the Rights of Child for the submission of its third and fourth periodic reports under the Convention on the Rights of the Child;
- (o) To further encourage the Government of Myanmar to follow up on the recommendations and concluding observations adopted by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child; and
- (p) To urge the Government of Myanmar to continue to collaborate with the Secretary-General to support the exercise of his "good offices" mission.

Netherlands

Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited Netherlands from 2 to 11 July 2006 (please refer to document A/HRC/4/34/Add.4).

86. Gender equality has considerably advanced in the Netherlands over the last decades thanks to an active emancipation policy driven by the Government and civil society. Contrary to widely held beliefs, however, the emancipation project is not yet completed, let alone self-sustainable. This is indicated by the fact that women in the Netherlands, including native Dutch women, are still strongly underrepresented in decision-making positions and the labour market in general. Moreover, a majority of women are not economically independent.

87. The Government's gender-mainstreaming strategy does not effectively address remaining inequalities since it delegates fragments of the problem associated with gender inequality to various entities, often as gender-neutral tasks. Overall coordination, monitoring and accountability mechanisms for different government agencies as well as gender-budgeting practices are lacking.

88. Domestic violence is the most prevalent form of violence against women in the Netherlands. While significant efforts to address the issue exist, they are typically formulated as a gender-neutral security issue. VAW in the private sphere is lumped together with violence against inherently vulnerable groups, thereby de-linking the problem from its root causes and prevailing power dynamics.

89. Women belonging to immigrant communities face particular problems of gender inequality that also translate into violence. Culturally essentialized perceptions of violence experienced by these women have increased stigmatization and discrimination against women and men of immigrant backgrounds, which is making the efforts to eradicate gender discrimination within these communities more difficult. These women's vulnerability to violence is fostered by increasingly restrictive immigration laws that have unequal consequences for women.

90. Women in prostitution still face violence, despite the legalization and regulation approach and the Government's efforts to enforce a zero-tolerance policy towards trafficking and sexual exploitation. Additionally, a grey sex sector continues to escape regulation and monitoring. Furthermore, the overtly regulation-oriented policy has failed to enhance the ability of women in prostitution to effectively pursue their interests in the sex sector.

91. Overall, without a comprehensive policy on violence against women that is defined within the context of gender inequality, a fragmented, gender-neutral and "law and order"-focused approach prevails, which undermines the effectiveness of the many commendable programmes in place to address the problem.

92. In view of my findings, I would like to make the following recommendations to the Government:

(a) Improve the gender-equality policy and institutional framework by:

- Providing institutional oversight to the gender-mainstreaming initiatives within a holistic gender-equality paradigm. In this regard, the mandate and competence of the Department for the Coordination of Emancipation Policy should be strengthened. All government agencies should also consider establishing internal gender steering committees that monitor and coordinate gender-mainstreaming work with a gender-equality perspective;
- Reviewing and consolidating existing policy and practice on all forms of VAW into a comprehensive gender-sensitive policy. The Government should also consider developing a national action plan to eradicate VAW;

- Considering ratification of the Council of Europe Convention on Action against Trafficking in Human Beings;
- Further reforming the social security and the taxation system to foster and facilitate the participation of women in the labour market;
- Ensuring adequate funding to non-governmental organizations and independent expert institutions working on gender equality and women's rights;

(b) Eliminate all forms of discrimination by:

- Implementing fully the recommendations contained in the concluding observations of the Committee on the Elimination of Discrimination against Women of 2001 on the Netherlands' second and third report to the Committee (see A/56/38);
- Addressing and challenging through media campaigns and school curricula unequal gender-based power relations in the private sphere by promoting male and female identities that break with notions of domination and use of force. Sexual education in schools should address harmful sexual attitudes and abuse of power in interpersonal relationships;
- Ensuring the norm of equal opportunity and non-discrimination on the basis of sex and ethnic or religious origin in the labour market, the justice sector and other key institutions. Special measures should be considered to facilitate the equal participation of women and men with an immigrant or refugee background in the educational system and the labour market. In this regard, the Government should consider signing and ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families;
- Acknowledging the diverse voices within different cultural groups and supporting those that respect and promote women's rights. To counter cultural essentialism and stigmatization, the Government should promote gender equality as a universal culture that has emerged in response to a universal history of gender inequality;
- Promoting a new social consensus that is inclusive and participatory and that aims at achieving integration based on equal participation and mutual respect;

(c) Investigate and punish perpetrators of VAW and protect women at risk of violence by:

- Pursuing a policy of zero tolerance of gender-based violence and sexual harassment, particularly in law enforcement. The police should adopt a proactive approach in investigating and documenting all cases of VAW including intimate-partner violence. Good practices in this regard should be documented and disseminated;
- Fostering international cooperation in cases that involve the transnational planning and execution of oppressive and violent practices;
- Considering an expansion of the concept of multi-ethnic policing beyond the Haaglanden police region and ensuring community support for such initiatives;
- Promoting the pending legislation on restraining orders. Immigrants should be able to apply for a restraining order without being questioned about their immigration status;
- Ensuring that restraining orders against potential perpetrators of VAW are issued on the basis of a comprehensive risk assessment to prevent violence before it occurs. Adequate resources should be dedicated to follow up restraining orders, detect breaches and initiate sanctions proceedings;
- Ensuring regulation of the entire sex sector, including escort agencies, operating within its boundaries by expanding and improving existing licensing schemes;
- Providing women in prostitution with access to information about their rights and supporting their initiatives to break dependency on pimps;

(d) Address particular vulnerabilities of women who are not Dutch citizens by:

- Ensuring that undocumented immigrant women have full access to State protection against violence, including filing criminal complaints relating to violence, applying for restraining orders, accessing a women's shelter or pursuing any other protective mechanism irrespective of their immigration status and without fear of deportation. Adequate resources should be made available to ensure that all

undocumented immigrant women exposed to violence (whether “honour”-related or not) can access women’s shelters;

- Providing women holding dependent residence permits who escape violence access to independent residence, regardless of whether they prove the fact that violence occurred by way of an official police report, medical reports, reports of a woman’s shelter or any other means. Immigrant women and men married to citizens or permanent residents should automatically receive an independent residence permit after no more than two years in the country, regardless of their income;
- Adopting gender-sensitive asylum procedures including by recognizing gender-related persecution as a ground for asylum and ensuring that they are accessible to traumatized victims of violence;
- Enhancing measures to detect and prevent trafficking and sexual exploitation of asylum-seekers, especially minors. The Government should also ensure inter-agency cooperation on the basis of a shared protocol to meticulously follow up each case of a disappearance of a minor asylum-seeker;
- Refraining from sending victims of transnational human trafficking back to their country of origin, regardless of whether they cooperate with the law enforcement authorities, unless an individualized risk assessment demonstrates that the victim can be safely repatriated. In cooperation with the country of origin, adequate provisions must be made to ensure that the victim can be reintegrated without revictimization;
- Developing a long-term protection and support strategy for women under threat or continued risk of violence by providing them with access to housing with suitable security arrangements and special security provisions to allow for their contact with non-hostile family members. Guidance and psychological counselling should also be provided for victims to enable them to establish a sustainable and safe life on their own;

(e) Expand the knowledge base on VAW, its causes and consequences, by:

- Commissioning a comprehensive prevalence survey, conducted by independent researchers, on all forms of violence and harassment in the domestic sphere that provides results disaggregated by the sex, age, ethnicity, education, social status and immigration status of the victims and perpetrators. The survey should also seek to assess to what extent victims were able to access law enforcement, social services and other relevant authorities.

Nicaragua

Introduction

During the period under review, the Working Group on Arbitrary Detention visited Nicaragua from 15 to 23 May 2006 (please refer to document A/HRC/4/40/Add.3).

102. Nicaragua has made highly impressive progress in improving its institutions, yet a great deal still remains to be done, in particular relating to the establishment of a true judicial career structure, which would have a restraining effect on the current excessive mobility of judges. Above all, efforts must be made to build on what has already been attained. Accordingly, the Working Group proposes the following recommendations:

(a) The authorities must ensure that the police comply strictly with the requirement to bring every detainee before a judge within a maximum period of 48 hours following his or her arrest. Presentation of the detainee must be made in person, with the physical presence of the detainee, and not consist merely in the submission of the police file. The judicial authorities must urge judges to ensure strict compliance with this rule. Compliance with this rule, which may appear a mere formality to an uninformed observer, is in point of fact a key safeguard against arbitrary detention and the possible occurrence of acts of torture and ill-treatment;

(b) The authorities must take steps to improve substantially the system of registers kept in police stations. From these registers it should be possible to determine with precision, at any moment, the situation of all detainees, including the date and time of their arrest; the police officers responsible for taking them into custody; the date and time on which the detention was notified to the Office of the Public Prosecutor, to the detainees' families and to their legal counsel; the date and time on which they were physically brought before a judge; the date and time on which they left the police station and the authority into whose charge they were handed; etc. The registers must contain all the necessary signatures and stamps;

(c) Work must be undertaken to revise the rules in the country's drug laws which impede or frustrate the idea that the punishment should be conducive to the rehabilitation of detainees and prepare them to return to society. In particular, a revision should be made to the provision contained in article 78 of Act No. 285, which stipulates that persons who have been prosecuted for the commission of offences involving the use or sale of drugs may not be released on any grounds against surety or benefit from the application of suspended sentences, parole, pardon or amnesty and, in addition, the provisions stipulating that, in all cases, they shall be sentenced to rigorous and not ordinary imprisonment and preventing them from benefiting from the system of sentence reduction for work. Consideration should also be given to the excessively high levels set for fines imposed as the principal penalty, since in the vast majority of cases these are converted to one year's additional rigorous imprisonment. The fine could be set in accordance with the economic capacity, the property status or the income of the person being sentenced;

(d) The institution of "enforcement by committal" - namely, the right of a judge in civil proceedings to order detention for failure to comply with obligations of a civil nature and the power of the police to detain in their cells persons who have not been arrested for the commission of offences - should be removed from the civil statute books;

(e) Urgent efforts should be made to review the situation of detainees in Bluefields and to consider the possibility of setting up a new prison system capable of accommodating many of those currently being held in police cells. In the meantime, urgent measures should be taken to relieve congestion in the police cells. Although the Working Group did not visit Puerto Cabezas, it would also recommend the construction of a detention facility in that centre, given that it currently lacks such a facility;

(f) Nicaragua should continue the process of democratic consolidation launched in 1987 through promulgation of its Political Constitution and in particular the processes of judicial reform and the reform of its criminal procedure. Efforts should also be made to combat crime and violence through policies that are respectful of human rights; through prevention programmes and by equipping the judiciary, the Office of the Public Prosecutor, the police and the Public Defender's Office with the necessary resources, tools and equipment for them to perform their tasks effectively.

Oman

Introduction

During the period under review, the Special Rapporteur on trafficking in persons, especially women and children, visited Oman from 1 to 7 November 2006 (please refer to document A/HRC/4/23/Add.2).

89. Bahrain, Oman and Qatar have, with varying degrees of commitment, recognized the existence of trafficking in persons within their borders. Various laws and measures to combat trafficking in persons and to provide for the protection of foreign migrant workers are in place and more are in the process of being elaborated. The respective Governments are, however, still falling short of fulfilling their international obligations to act with due diligence to prevent trafficking, prosecuting and punishing traffickers and to provide trafficked persons with the appropriate remedies and assistance.

90. Bahrain, Oman and Qatar are countries of destination for trafficking in persons for forced labour and sexual exploitation. The main victims are women and girls recruited as domestic workers and entertainers. Other workers, in particular men in the construction industry and in farm work, are also affected by this phenomenon albeit to a lesser extent. Recent legislation in Oman and Qatar concerning child camel jockeys has been effective in addressing the exploitation of children for this purpose. Close monitoring to completely bring an end to the trafficking of children for this purpose is nevertheless imperative.

91. The Special Rapporteur is particularly concerned with the sponsorship system and the climate of abuse and exploitation that this arrangement frequently engenders for migrant workers. Of further concern is the non-applicability of the respective Labour Codes and related laws to domestic workers. Access to justice for foreign migrant workers is inadequate since, for example, legal proceedings are extraordinarily lengthy and workers often have limited access to counsel and interpretation assistance.

92. More efforts are needed to clarify the concept of trafficking in persons to public officials with a view to ensuring that the current legislation is enforced. Sensitization of the general public is also essential in order to eradicate discriminatory attitudes and practices towards migrant workers.

93. The Special Rapporteur supports the adoption of the Gulf Cooperation Council Guiding Principles on combating trafficking and the stronger regional cooperation on trafficking in persons that this will encourage.

94. Finally, it is imperative that anti-trafficking and labour laws are respected and implemented and that decisions regarding violations of these laws are enforced.

95. The Special Rapporteur recommends that:

A. Prevention

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant ILO Conventions including Convention No. 97 (1949) on Migration for Employment, and No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers be ratified. Qatar should seriously consider ratifying the Palermo Protocol;

(b) Domestic legislation be meticulously brought in line with the Palermo Protocol and all elements in the trafficking definition be thoroughly reflected;

(c) Labour laws be amended with a view to making them also applicable to domestic workers;

(d) The sponsorship system be abolished and migrant workers allowed to more easily change their employers;

- (e) The relevant authorities inspect, in the presence of employers and workers, all migrant workers' contracts, including domestic workers and women who are brought in as entertainers, with a view to ensuring that conditions therein are not conducive to abuse and to ascertain that workers understand and willingly accept the conditions of their contracts. A translated copy of the contract in a language the worker understands should be obligatory;
- (f) Governments seek to establish bilateral and multilateral agreements and cooperation programmes with countries of origin and transit to prevent trafficking of persons, especially women and children, and cooperate on investigations, convictions and extradition of criminals. In this framework of cooperation, the Governments could hold regular meetings with foreign embassies to review developments and share information;
- (g) Governments seek the assistance and collaborate with specialized agencies including the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Organization for Migration and the International Labour Organization to obtain their expert advice on matters relevant to addressing the phenomenon of trafficking in persons, particularly on the human rights aspects of trafficked persons;
- (h) Whilst commending Bahrain for its progress in this area, Governments respect their international obligations in creating an enabling environment in which civil society may operate to contribute to the fight against trafficking and the promotion and protection of the human rights of trafficked persons;
- (i) All migrant workers receive an orientation session in the sending and receiving countries to inform them about their rights and obligations as employees and residents in the receiving countries, with special attention to the traditions and cultures of the host society;
- (j) Recruitment agencies be properly monitored in both sending and receiving countries. Registration of these agencies could be made mandatory and regular and unannounced official on-site inspections be carried out;
- (k) Relevant public officials and recruiting agencies be given training on the nature and existence of trafficking in persons, labour laws and the rights and freedoms of foreign migrant workers;
- (l) Oman adopt a national plan of action and establish an independent national coordinating mechanism to coordinate inter-governmental discussions and enact measures to combat trafficking in persons and provide for the protection of trafficked persons. Civil society, international organizations and the international community should be consulted in this process.

B. Protection

- (m) Screening and identification procedures of trafficked persons in detention centres be systematic. Alternative arrangements, other than deportation or detention centres, should be considered to safely house identified trafficked persons;
- (n) Foreign workers be guaranteed the right to an accessible and fair system of justice. Court fees, if at all, should be reasonable, proceedings should be dealt with urgently, interpretation services and legal aid provided and special attention be given to the needs of women and children. Working permits of migrant workers should not be suspended pending legal disputes and the right to find alternative employment during such proceedings should be allowed. The necessary protection of witnesses and trafficked persons, including the right to confidentiality, should be respected;
- (o) A comprehensive human rights framework providing for the promotion and protection of the human rights of trafficked persons be established and implemented with a view, inter alia, to encouraging trafficked persons to make formal complaints against their traffickers. The Governments should ensure that trafficked persons are provided with the necessary protection and assistance, including appropriate housing, legal assistance, medical, psychological and material assistance, the right to compensation for damages suffered, safe repatriation or social reintegration as desirable. States should respect their obligations of non-refoulement. Such protection and assistance should not be conditional to their acceptance to testify against the alleged traffickers;
- (p) Given that the right to privacy is restricted by mandatory HIV/AIDS testing, public health, criminal and anti-discrimination legislation should prohibit mandatory HIV/AIDS-testing of targeted groups, including migrant workers. When tests are carried out, confidentiality of results must be ensured;

- (q) Authorities ensure that embassies are systematically informed when their nationals are being detained, and visits by the relevant consular officials be facilitated. Sending countries should ensure that their embassies in the receiving States have the necessary resources to carry out such visits, follow up on the cases and provide any necessary assistance;
- (r) Mechanisms to monitor the working conditions and compliance of employment contracts of domestic workers in the households of their employers be established. Unannounced house visits and confidential interviews with domestic workers, including at the end of their probationary period, should be carried out;
- (s) Mechanisms to monitor the working conditions of migrant workers whose employment is regulated by the Labour Codes, as well as inspection of labour sites, including venues where foreign workers are employed at night, be more systematically and strictly applied. Non-registered labour camps should be shut down or made to register;
- (t) Special attention be paid to addressing the particular needs of women and children in the provision of protective measures. Such measures should not infringe on other rights and freedoms, including freedom of movement;
- (u) Migrant workers in detention centres be informed of the reasons of their arrest in a language they understand, be provided with legal assistance if requested, be allowed to make a local or international phone call and have access to their embassies;
- (v) Governments be extremely vigilant in ensuring that parents and guardians accompanying minors have not received payments or benefits to give their consent to allow minors under their care to be exploited. The best interest of the child should always guide the handling of such cases;
- (w) Special attention be paid to detecting minors crossing borders and passing as adults with falsified documents. In such cases, necessary steps should be taken to provide the minors concerned with the necessary protection and assistance, including safe repatriation or social reintegration if repatriation is not in the interest of the minor;
- (x) Bahrain no longer postpone the opening of the shelter identified for this purpose and encourages the Government to review the plans communicated to her to limit the migrant women's movement for their own protection. Alternative measures, such as being accompanied by social workers when leaving the shelter, could be envisaged. Oman should seriously consider establishing a shelter to provide trafficked persons with a place of refuge where they can obtain the necessary protection and assistance;
- (y) Current discussions in Oman on camel racing will result in raising the minimum age to 18. Moreover, in line with the recommendations of the Committee on the Rights of the Child, the Special Rapporteur calls on the Governments of Oman and Qatar to carry out unannounced inspections at camel races and breeding farms to ensure the proper implementation of the relevant laws.

C. Punishment

- (z) The Governments fulfil their international obligations in acting with due diligence to prevent, investigate and punish trafficking in persons in accordance with the provisions delineated in the Palermo Protocol;
- (aa) The Governments compile comprehensive statistics on investigations and prosecutions of trafficking-related offences disaggregated by the type of offence, gender and age of victim;
- (bb) In harmonizing national legislation with the Palermo Protocol, Bahrain and Oman ensure that all elements of trafficking in persons are defined as crimes;
- (cc) The Governments ensure that court decisions and penalties be promptly and strictly enforced. Decisions and sentences concerning human trafficking should be made public;
- (dd) The Governments enter into extradition agreements with neighbouring countries, including countries of origin and transit, to coordinate their efforts in combating human trafficking.

Qatar

Introduction

During the period under review, the Special Rapporteur on trafficking in persons, especially women and children, visited Qatar from 8 to 12 November 2006 (please refer to document A/HRC/4/23/Add.2).

89. Bahrain, Oman and Qatar have, with varying degrees of commitment, recognized the existence of trafficking in persons within their borders. Various laws and measures to combat trafficking in persons and to provide for the protection of foreign migrant workers are in place and more are in the process of being elaborated. The respective Governments are, however, still falling short of fulfilling their international obligations to act with due diligence to prevent trafficking, prosecuting and punishing traffickers and to provide trafficked persons with the appropriate remedies and assistance.

90. Bahrain, Oman and Qatar are countries of destination for trafficking in persons for forced labour and sexual exploitation. The main victims are women and girls recruited as domestic workers and entertainers. Other workers, in particular men in the construction industry and in farm work, are also affected by this phenomenon albeit to a lesser extent. Recent legislation in Oman and Qatar concerning child camel jockeys has been effective in addressing the exploitation of children for this purpose. Close monitoring to completely bring an end to the trafficking of children for this purpose is nevertheless imperative.

91. The Special Rapporteur is particularly concerned with the sponsorship system and the climate of abuse and exploitation that this arrangement frequently engenders for migrant workers. Of further concern is the non-applicability of the respective Labour Codes and related laws to domestic workers. Access to justice for foreign migrant workers is inadequate since, for example, legal proceedings are extraordinarily lengthy and workers often have limited access to counsel and interpretation assistance.

92. More efforts are needed to clarify the concept of trafficking in persons to public officials with a view to ensuring that the current legislation is enforced. Sensitization of the general public is also essential in order to eradicate discriminatory attitudes and practices towards migrant workers.

93. The Special Rapporteur supports the adoption of the Gulf Cooperation Council Guiding Principles on combating trafficking and the stronger regional cooperation on trafficking in persons that this will encourage.

94. Finally, it is imperative that anti-trafficking and labour laws are respected and implemented and that decisions regarding violations of these laws are enforced.

95. The Special Rapporteur recommends that:

A. Prevention

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant ILO Conventions including Convention No. 97 (1949) on Migration for Employment, and No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers be ratified. Qatar should seriously consider ratifying the Palermo Protocol;

(b) Domestic legislation be meticulously brought in line with the Palermo Protocol and all elements in the trafficking definition be thoroughly reflected;

(c) Labour laws be amended with a view to making them also applicable to domestic workers;

(d) The sponsorship system be abolished and migrant workers allowed to more easily change their employers;

- (e) The relevant authorities inspect, in the presence of employers and workers, all migrant workers' contracts, including domestic workers and women who are brought in as entertainers, with a view to ensuring that conditions therein are not conducive to abuse and to ascertain that workers understand and willingly accept the conditions of their contracts. A translated copy of the contract in a language the worker understands should be obligatory;
- (f) Governments seek to establish bilateral and multilateral agreements and cooperation programmes with countries of origin and transit to prevent trafficking of persons, especially women and children, and cooperate on investigations, convictions and extradition of criminals. In this framework of cooperation, the Governments could hold regular meetings with foreign embassies to review developments and share information;
- (g) Governments seek the assistance and collaborate with specialized agencies including the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Organization for Migration and the International Labour Organization to obtain their expert advice on matters relevant to addressing the phenomenon of trafficking in persons, particularly on the human rights aspects of trafficked persons;
- (h) Whilst commending Bahrain for its progress in this area, Governments respect their international obligations in creating an enabling environment in which civil society may operate to contribute to the fight against trafficking and the promotion and protection of the human rights of trafficked persons;
- (i) All migrant workers receive an orientation session in the sending and receiving countries to inform them about their rights and obligations as employees and residents in the receiving countries, with special attention to the traditions and cultures of the host society;
- (j) Recruitment agencies be properly monitored in both sending and receiving countries. Registration of these agencies could be made mandatory and regular and unannounced official on-site inspections be carried out;
- (k) Relevant public officials and recruiting agencies be given training on the nature and existence of trafficking in persons, labour laws and the rights and freedoms of foreign migrant workers;
- (l) Oman adopt a national plan of action and establish an independent national coordinating mechanism to coordinate inter-governmental discussions and enact measures to combat trafficking in persons and provide for the protection of trafficked persons. Civil society, international organizations and the international community should be consulted in this process.

B. Protection

- (m) Screening and identification procedures of trafficked persons in detention centres be systematic. Alternative arrangements, other than deportation or detention centres, should be considered to safely house identified trafficked persons;
- (n) Foreign workers be guaranteed the right to an accessible and fair system of justice. Court fees, if at all, should be reasonable, proceedings should be dealt with urgently, interpretation services and legal aid provided and special attention be given to the needs of women and children. Working permits of migrant workers should not be suspended pending legal disputes and the right to find alternative employment during such proceedings should be allowed. The necessary protection of witnesses and trafficked persons, including the right to confidentiality, should be respected;
- (o) A comprehensive human rights framework providing for the promotion and protection of the human rights of trafficked persons be established and implemented with a view, inter alia, to encouraging trafficked persons to make formal complaints against their traffickers. The Governments should ensure that trafficked persons are provided with the necessary protection and assistance, including appropriate housing, legal assistance, medical, psychological and material assistance, the right to compensation for damages suffered, safe repatriation or social reintegration as desirable. States should respect their obligations of non-refoulement. Such protection and assistance should not be conditional to their acceptance to testify against the alleged traffickers;
- (p) Given that the right to privacy is restricted by mandatory HIV/AIDS testing, public health, criminal and anti-discrimination legislation should prohibit mandatory HIV/AIDS-testing of targeted groups, including migrant workers. When tests are carried out, confidentiality of results must be ensured;

- (q) Authorities ensure that embassies are systematically informed when their nationals are being detained, and visits by the relevant consular officials be facilitated. Sending countries should ensure that their embassies in the receiving States have the necessary resources to carry out such visits, follow up on the cases and provide any necessary assistance;
- (r) Mechanisms to monitor the working conditions and compliance of employment contracts of domestic workers in the households of their employers be established. Unannounced house visits and confidential interviews with domestic workers, including at the end of their probationary period, should be carried out;
- (s) Mechanisms to monitor the working conditions of migrant workers whose employment is regulated by the Labour Codes, as well as inspection of labour sites, including venues where foreign workers are employed at night, be more systematically and strictly applied. Non-registered labour camps should be shut down or made to register;
- (t) Special attention be paid to addressing the particular needs of women and children in the provision of protective measures. Such measures should not infringe on other rights and freedoms, including freedom of movement;
- (u) Migrant workers in detention centres be informed of the reasons of their arrest in a language they understand, be provided with legal assistance if requested, be allowed to make a local or international phone call and have access to their embassies;
- (v) Governments be extremely vigilant in ensuring that parents and guardians accompanying minors have not received payments or benefits to give their consent to allow minors under their care to be exploited. The best interest of the child should always guide the handling of such cases;
- (w) Special attention be paid to detecting minors crossing borders and passing as adults with falsified documents. In such cases, necessary steps should be taken to provide the minors concerned with the necessary protection and assistance, including safe repatriation or social reintegration if repatriation is not in the interest of the minor;
- (x) Bahrain no longer postpone the opening of the shelter identified for this purpose and encourages the Government to review the plans communicated to her to limit the migrant women's movement for their own protection. Alternative measures, such as being accompanied by social workers when leaving the shelter, could be envisaged. Oman should seriously consider establishing a shelter to provide trafficked persons with a place of refuge where they can obtain the necessary protection and assistance;
- (y) Current discussions in Oman on camel racing will result in raising the minimum age to 18. Moreover, in line with the recommendations of the Committee on the Rights of the Child, the Special Rapporteur calls on the Governments of Oman and Qatar to carry out unannounced inspections at camel races and breeding farms to ensure the proper implementation of the relevant laws.

C. Punishment

- (z) The Governments fulfil their international obligations in acting with due diligence to prevent, investigate and punish trafficking in persons in accordance with the provisions delineated in the Palermo Protocol;
- (aa) The Governments compile comprehensive statistics on investigations and prosecutions of trafficking-related offences disaggregated by the type of offence, gender and age of victim;
- (bb) In harmonizing national legislation with the Palermo Protocol, Bahrain and Oman ensure that all elements of trafficking in persons are defined as crimes;
- (cc) The Governments ensure that court decisions and penalties be promptly and strictly enforced. Decisions and sentences concerning human trafficking should be made public;
- (dd) The Governments enter into extradition agreements with neighbouring countries, including countries of origin and transit, to coordinate their efforts in combating human trafficking.

Republic of Korea

Introduction

During the period under review, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea visited the Republic of Korea

The Special Rapporteur on the human rights of migrants visited the Republic of Korea from 4 to 12 December 2006 (please refer to document A/HRC/4/24/Add.2).

57. The Special Rapporteur calls on the Republic of Korea to ratify as a matter of priority the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as it is the foremost international instrument for the promotion and the protection of the rights of all migrant workers and their families.

58. The Special Rapporteur encourages incentives for voluntary return rather than expulsion in accordance with procedural guarantees against forced return provided for in the International Convention on Civil and Political Rights (ICCPR), Article 13.

59. The Special Rapporteur encourages the Korean Government to revise the implementation of the new EPS Act in accordance with international human rights treaties that the Government of the Republic of Korea has signed or ratified. In this regard special attention should be given to the need to provide unskilled migrant workers with the possibility of lodging complaints to the competent authorities from his employer in case of violations of his human rights.

60. The RoK should consider providing migrant workers with the possibility of family reunification.

61. The Special Rapporteur recommends that every employer who is responsible for violating the human rights of migrant workers is brought promptly to justice, including through criminal prosecutions.

With regard to female migrants

62. The Korean Government should mitigate the requirements to apply for naturalization for the victims of domestic violence. Migrant women who have a child with Korean men should be entitled to residency rights regardless of their marriage status.

63. The Government should create systematic arrangements to provide foreign spouses with Korean-language training and cultural integration programmes upon their arrival in the Republic of Korea. The Government should provide health-related information to foreign wives in a language they understand.

64. In the case of domestic violence, the Government should provide a legal system to protect the foreign spouse. Foreign victims must have access to adequate interpretation facilities in police stations and the courts. The Korean Government must expand translation services through the Women's Emergency Hotline.

65. The Government must regulate marriage agencies and brokers. Victims of international marriage agencies and private marriage brokers must be registered classified after a screening process to be victims of human trafficking.

With regard to migrant children

66. As foreseen in the CRC, the best interests of the child should govern all regulations or decisions taken to govern their status. In particular, all efforts should be made to allow them to enjoy all their human rights notably with regard to access to education and health services.

The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea visited Korea from 14 to 18 December 2006 (please refer to document A/HRC/4/15).

58. Significantly, the Republic of Korea voted in favour of the draft resolution on the situation of human rights in the Democratic People's Republic of Korea adopted by the Third Committee of the General Assembly in November 2006, which was subsequently adopted by the plenary to become resolution 61/174. The resolution expresses very serious concern at a variety of human rights violations in the Democratic People's Republic of Korea and strongly urges the latter to respect fully all human rights and fundamental freedoms, as well as to cooperate with the Special Rapporteur. It also requests the Secretary-General and the Special Rapporteur to report to the Assembly at its next session on the situation. The Special Rapporteur is of the view that there is a related need to enable the negotiations known as the six-party talks to resume in order to solve key issues, focusing primarily on the nuclear problem facing the Korean peninsula which may also have an impact on the human rights situation; a positive development on that front will contribute to the space for progressive humanitarian action.

59. While the Republic of Korea has become more assertive by voting for the resolution mentioned, national policy leaves the door open for possible opportunities to engage with the Democratic People's Republic of Korea when the time is ripe. To date, the Republic of Korea's policy towards its northern neighbour has been a special policy influenced by the particular history of the Korean peninsula with a shared destiny for the Republic of Korea and the Democratic People's Republic of Korea. The human rights issues covered by national policy include the following. There remain various consequences of the Korean war of 1950-1953 which have an impact on human rights, for instance the issue of missing persons and the reunification of families separated by that war. These are being dealt with by various inter-Korean ministerial talks and meetings of the International Committee of the Red Cross. The latest inter-Korean ministerial talks were held in Pyongyang in April 2006 and the resultant joint press statement noted that "The South and the North agreed to work together to actually resolve issues of those whose whereabouts and fates have been unknown during and after the Korean War". The latest ICRC talks between the two countries took place in February 2006 and the agreement reached at that meeting stated that "the two parties will include an issue of confirmation of the fates of those missing during and after the Korean War in a broader category of separated families, consult on and resolve the issue".

60. While a number of separated families from the North and the South have already met, this needs to be maximized so as to enable sustained family reunions to take place; it is important to enable family members to remain in touch once they have returned to their respective residences. There is also pending before parliament a bill to provide relief and assistance to those abducted by the Democratic People's Republic.

61. Another part of the Republic of Korea's human rights policy towards the Democratic People's Republic is that the country has provided substantial humanitarian aid to its northern neighbour, both bilaterally and multilaterally. While aid is currently suspended as a reaction to the missile and nuclear tests, it may be resumed at an appropriate time. The Republic of Korea has also been supportive of the work of the Special Rapporteur.

62. It will be recalled that at the end of the Special Rapporteur's visit to the Republic of Korea in 2005 for the first time in connection with his mandate, he issued a six-point human rights formula. Elements of the six points deserve to be underlined, together with other emphases as follows (see E/CN.4/2006/35, para. 78):

The Special Rapporteur:

- Encourages the Republic of Korea and the Democratic People's Republic of Korea, in the spirit of inter-Korean dialogue, reconciliation and cooperation, to maximize family reunion opportunities, and urges the Democratic People's Republic of Korea to clarify and resolve effectively the long-standing problem of missing persons, bearing in mind the importance of resuming inter-Korean ministerial talks in future as part of the process to support the improvement of human rights in the country;
- Supports the Republic of Korea and the international community to improve the human rights situation in the Democratic People's Republic of Korea, in particular the right to food; provide humanitarian aid, including food aid, to the latter, which, although currently suspended on the part of the former, might be resumed at the appropriate time on the ground of humanitarianism, with adequate monitoring to access the target group of beneficiaries; and urges the Democratic People's Republic of Korea to build food security through sustainable agricultural techniques, good governance, broad-based people's participation in decision-making processes, and equitable allocation of resources to respond to the development needs of the country;
- Encourages the Republic of Korea to continue its humanitarian policy of accepting those who have sought refuge from the Democratic People's Republic of Korea and to facilitate their social recovery and reintegration, with more opportunities for vocational training and other supports with a view to accessing a variety of employment and livelihood options sustainably;
- Calls upon the Democratic People's Republic of Korea to end the various discrepancies and transgressions concerning respect for human rights in the civil, political, economic, social and cultural fields in the country, and to implement effectively the human rights treaties to which it is a party and the various recommendations addressed to the country by a variety of United Nations human rights mechanisms, including the recommendations of the United Nations Special Rapporteur in his reports to the United Nations;
- Urges the Democratic People's Republic of Korea to invite the Special Rapporteur and other United Nations human rights mechanisms to visit the country to take stock of the human rights situation and recommend reforms and related follow-up;
- Invites the Democratic People's Republic of Korea progressively to engage in cooperative activities with the international community to improve the implementation of human rights in the country, such as through human rights dialogue(s) supported by technical assistance, economic programmes with a human rights component, and rule of law programmes (e.g. training and education to build the capacity of law enforcers, to respect civil liberties, and to reform the prison system), with greater space for civil society participation.

63. The above should be complemented by active and practical steps to ensure progress and achieve substantive improvements in human rights implementation in the Democratic People's Republic of Korea.

Russian Federation

Introduction

During the period under review, the Special Rapporteur on racism visited Russian Federation from 12 to 17 June 2006 (please refer to document A/HRC/4/19/Add.3).

80. The Government needs to officially and publicly acknowledge the existence and the depth of the trend of racism, racial discrimination and xenophobia permeating the Russian society, and express, in the strongest and most determined terms, its political will to combat it. Particularly important is the condemnation of any racist or xenophobic action or discourse, including by political parties and the media.

81. The rich legacy and depth of human, cultural and religious multicultural interactions in the deepest layers of the Russian society has to be a strategic axis for the Government in linking the combat against racism and xenophobia with the promotion and reconstruction of multiculturalism of the Russian society, aiming at the strengthening of the democratic political process. To this effect, the Government should strongly promote by law, education and information, the multicultural identity of the Russian society.

82. As an immediate step, the Government should establish a commission of reflection composed of representatives of concerned State institutions (justice, police, education, culture), democratic political parties, civil society organizations, groups and communities concerned, as well as religious, intellectual and artistic personalities reflecting the diversity of the country, to collect data on manifestations and expressions of racism and xenophobia, analyse their deep root causes and formulate a national programme of action against racism and xenophobia.

83. The Government should also consider the establishment of an independent body at Federal level aiming at the promotion and protection of human rights and the combat against racism, xenophobia and discrimination in a holistic manner, including discrimination on grounds of race, religion, ethnicity, nationality, citizenship, residence, gender, age, disability, sexual orientation and any other status. The composition of this body, whose work would be supported by regional branches, should be representative of the diversity of Russian society, with its members being appointed by Parliament on the basis of proposals presented by the Government, civil society organizations and cultural, religious and linguistic communities. This body would work in close cooperation with relevant State and civil society actors, in particular the Office of the Ombudsman and regional ombudsmen, and should be given administrative, legal and normative powers to investigate acts of racism and discrimination and provided with adequate human, material and financial resources.

84. The Government should determinedly continue to reinforce legislation aimed at combating racism, racial discrimination and xenophobia, both at criminal and civil and administrative law levels. Particularly important is to explicitly prohibit racial discrimination, in line with article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, in constitutional, civil and administrative legislation, using a clear and comprehensive definition of discrimination. Issues related to immigration, asylum and the situation of foreigners should be treated on the basis of the pertinent international instruments and not only on the basis of the security dimension and the combat against terrorism. The Special Rapporteur also encourages the revision of the law of 2002 on "Counteracting Extremist Activities" with a view to more clearly defining its scope.

85. Strengthening of legislation should be accompanied by the continuation and reinforcement of current efforts in the implementation of adequate existing provisions in order to send a firm message of unacceptability to the perpetrators of racist and discriminatory practices, xenophobic violence and hate speech. These efforts should include the strengthening of the capacity of the judiciary and law enforcement agencies, particularly the Office of the General Prosecutor, to effectively implement the Criminal Code provisions

against perpetrators or racist attacks, especially through adequate training on the content of international human rights law instruments - in particular the International Convention on the Elimination of All Forms of Racial Discrimination – and existing national laws.

86. Acts of racism and intolerance against foreigners, and in particular students, human rights defenders, witnesses in criminal investigations, intellectuals and activists engaged in the combat against racism should be firmly condemned and given utmost priority by law enforcement officials, amongst others, by offering effective protective measures from racially motivated attacks, especially by ultranationalist groups.

87. The Government should also take measures to stop practices of racial profiling, particularly racially targeted passport and registration checks conducted against specific communities by law enforcement agents in the public place. These measures should include education and sensitization of law enforcement officials to ensure that their duties are carried out with no distinction as to race, colour, national or ethnic origin. The Government should ensure that this principle applies as well within the framework of the fight against terrorism. Misbehaviours by law enforcement agents towards victims of racially motivated acts should be exemplarily sanctioned.

88. The Government should take firm measures to prevent that discriminatory practices linked to granting citizenship and residence registration continue to be used against certain groups, and thus ensure that decisions of the Constitutional and Supreme Courts on the unconstitutionality of such practices are strictly implemented and respected. The situation of a large number of former Soviet citizens who, despite having lived long or permanently in Russia, are considered as illegal migrants since the entry into force of the Federal Laws on Citizenship and on the Legal Status of Foreign Citizens, should be addressed as a matter of urgency.

89. The Government should ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and harmonize its national legislation accordingly.

90. The Government should firmly condemn any manifestation of racism and intolerance against the Caucasian and Central Asian population, ensure that they are investigated in a prompt, thorough and impartial manner and that those guilty of ethnically motivated agitation and violence are adequately prosecuted and punished.

91. The Government should adopt a comprehensive federal plan for the Roma community, aiming at both promoting and respecting their cultural identity and at eradicating their social and economic marginalization, in particular, poor housing conditions, lack of documents, the high level of dropouts of Roma children at school and the difficulties of the Roma to access employment. The plan should also aim at sensitizing the Russian society to Roma history and traditions, in order to eliminate the negative stigma and stereotypes Roma are recurrently associated with. The problem of housing evictions should be treated as a matter of priority.

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

93. The Government is encouraged to revise school curricula and school textbooks, including history books, to ensure that issues related to human, cultural and social advantages of multiculturalism are reflected. Issues of mutual respect, promotion of tolerance and also of racism, racial discrimination and xenophobia need to be properly covered in school curricula and teacher-training courses.

94. The Government should consider launching a process, with the participation of the media, to reflect on the role and responsibility of the media in the fight against racism and xenophobia and the promotion of tolerance, with the aim of adopting a deontological code of conduct.

95. Finally, the Special Rapporteur looks forward to the establishment of an OHCHR human rights presence within the United Nations Country Team in Moscow and recommends that the fight against racism, racial discrimination, xenophobia and related intolerance constitute an important part of its work.

SPAIN

Introduction

During the period under review, the Special Rapporteur on adequate housing, visited Spain from 20 November to 1 December 2006 (please refer to document A/HRC/4/18/Add.3).

13. At this stage, the Special Rapporteur would like to make the following preliminary recommendations. Spanish authorities should consider:

- Fundamentally reviewing the economic and social policies that have an impact on housing and related issues. Policies and laws that flow from such a reconsideration should be underpinned by a human rights approach to housing. The legal basis of this approach already exists in the Spanish constitution and the international human rights instruments that Spain has ratified;
- Recognizing housing as a basic human right and not, as is now predominantly the case, a mere commodity, to be bought and sold. The Government in all its law and policies needs to implement the right to housing and the social function of property as recognized in its national laws and by international standards;
- Adopting a comprehensive and coordinated national housing policy based on human rights and the protection of the most vulnerable. The Special Rapporteur calls for the indivisibility of human rights approach while articulating policies on adequate housing;
- Seriously reflecting upon the functioning of the market, including intervening if necessary to control land and property speculation. Such a review of market policies should include a review of the current home-ownership model, including subsidies targeted to the higher end of the housing market, and its possible negative impact on low-income housing options;
- Ensuring means of justiciability and efficient complaint mechanisms to permit the implementation of the right to adequate housing contained in the Spanish Constitution and international instruments;
- Rigorously investigating and appropriately penalizing practices such as "mobbing", corruption, or discrimination in the real-estate sector. Proper mechanisms to investigate sanction and redress should be made fully available to those parts of the population affected by these practices;
- Urgently addressing the situation of the insufficiency of housing and social services for women and for vulnerable groups and people with low incomes, homeless, migrants and Roma communities;
- Facilitating access to various types of accommodation to include shelters, emergency housing, boarding houses and transitional housing;
- Increasing the availability of rental housing, through more efficient utilization of vacant buildings, but also through the building of a publicly managed stock of rental housing targeted at meeting the demands of the low-income population and guaranteeing security of tenure for tenants which under the current law does not exist for more than a five-year period;
- Improving the effectiveness of the process already undertaken of wide consultation with civil society on designing policies, strategies and planning in housing and urbanization by all level of State authorities.

Sweden

Introduction

During the period under consideration, the Special Rapporteur on right to health and the Special Rapporteur on violence against women visited Sweden.

The Special Rapporteur on right to health visited Sweden from 9 to 18 January 2006 (please refer to document A/HRC/4/28/Add.2).

116. Throughout this report, the Special Rapporteur identifies a number of conclusions and recommendations and he will not repeat them. Here, he wishes to draw attention to two practical developments that bear upon a number of the themes that recur in this report.

1. A human rights-based approach to health indicators

117. The international right to the highest attainable standard of health is subject to progressive realization. Inescapably, this means that what is expected of a State will vary over time. With a view to monitoring progress, a State needs a device to measure this variable dimension of the right to health. The most appropriate device is the combined application of indicators and benchmarks. Thus, a State selects appropriate indicators that will help to monitor different dimensions of the right to health. Most indicators will require disaggregation, such as on the grounds of sex, race, ethnicity, rural/urban and socio-economic status. Then the State sets appropriate national targets or benchmarks in relation to each disaggregated indicator. In this way, indicators and benchmarks fulfil some important functions. Not least, they can help the State to monitor its progressive realization of the right to health, enabling the authorities to recognize when policy adjustments are required.

118. Because of the crucial importance of finding a way to monitor the progressive realization of the right to health, the Special Rapporteur has devoted three reports to indicators and benchmarks. His last report to the Commission on Human Rights sets out a methodology for a human rights-based approach to health indicators.⁷¹ While this methodology remains work in progress, the Special Rapporteur encourages Sweden to examine and adopt this human rights-based approach to health indicators, or an approach similar to it.

119. The methodology addresses the difficult issue of the disaggregation of data. Human rights have a particular preoccupation with disadvantaged individuals and groups. While a “regular” health indicator might or might not be disaggregated, from the human rights perspective, it is imperative that all relevant indicators be disaggregated. From the human rights perspective, the goal is to disaggregate in relation to as many of the internationally prohibited grounds of discrimination as possible, such as sex, race, ethnicity, rural/urban and socio-economic status.

120. Sweden has a long tradition of collecting health data. While it is commonplace in Sweden to collect disaggregated data on various grounds, including sex and age, disaggregation on other grounds, such as race and ethnicity, is not routine. This is very significant, because the Special Rapporteur was informed that it is widely understood that racial and ethnic minorities in Sweden have comparatively poor health status. Without data disaggregated on the grounds of race and ethnicity, how do the authorities know the scale and nature of this problem? If they do not know the scale and nature of the problem, how can they devise the most appropriate interventions? If an intervention were introduced, how would they know whether or not it was effective?

121. There are understandable sensitivities associated with the collection of some disaggregated data, such as on race and ethnicity. Such data can be misused. Appropriate ways need to be found, as they have in other

countries, to address this issue. Nonetheless, with a view to gaining a clear picture of the enjoyment of the right to health across all groups in Sweden, the Special Rapporteur recommends that those responsible for data collection routinely disaggregate on a wide range of grounds, including race, ethnicity and national origin.

2. The crucial role of impact assessments

122. In 2003, the Commission on Human Rights requested the Special Rapporteur to explore the role of health impact assessments.⁷² Since then, he has looked at the issue on a number of occasions, most fully in a UNESCO-funded study of May 2006.⁷³ This study focuses on how the right to health can be integrated into environmental, social and other existing impact assessments. While on mission to Sweden, the Special Rapporteur was very interested to learn that in 2005 the Swedish National Institute of Public Health published a *Guide to Health Impact Assessments* and that the Government had recently commissioned the Institute to undertake more work in this important area. While the *Guide* is highly commendable, it does not integrate the right to health into its approach.

123. A recurrent theme in the present report is the need to integrate, in a coherent and consistent manner, the right to health across Sweden's national and international policymaking processes. Health impact assessments reflective of the right to health can contribute to such mainstreaming and policy coherence. The Special Rapporteur warmly commends all those in Sweden for their work on health impact assessments; encourages the Institute to integrate the right to health into its impact assessments; urges the Government to support such pioneering work; and encourages all parties both to use impact assessments and to ensure that these assessments take due account of the right to the highest attainable standard of health.

The Special Rapporteur on violence against women visited Sweden from 12 to 21 June 2006 (please refer to document A/HRC/4/34/Add.3).

68. Sweden has firmly established a strong equal opportunity framework, which has led to very impressive advances towards the achievement of equal opportunities for women and men in the public sphere. At the same time, however, unequal power relations between women and men in Sweden continue to be fuelled by deeply rooted patriarchal gender norms, which will gradually erode provided that the Government and society at large sustain their strong commitment to transform relations between the sexes.

69. Owing to the survival of these hidden social norms, there are still significant levels of violence against women in Sweden. The ongoing rise in sexual violence is a particular matter of concern. The perpetrators and victims can be found in all segments and at all levels of society, although some women, including immigrant, refugee and minority women as well as women in prostitution, face particular vulnerabilities.

70. Overall, the Government and society appear to be determined to combat and eradicate violence against women. The penal law framework addressing violence against women is excellent, but low prosecution and conviction rates give a clear indication that its implementation must be further improved. Some deficiencies in protecting women exposed to violence remain and a number of municipalities clearly have to raise the standards of their protection policies. There is room for further innovative strategies to effectively respond to the remaining inequalities. Such strategies would need to address not only the reproduction of gender hierarchies in the private sphere, but would also have to remove the existing obstacles to the equal participation of immigrants and refugees in society.

71. In view of the measures already taken and the remaining deficiencies, I would like to make the following recommendations:

(a) To the Government:

(i) Enhance and reinforce the institutional framework on gender equality by:

- Strengthening efforts to establish and implement gender budgeting practices and expand them to all levels of State institutions;
 - Broadening the competences of the Equal Opportunities Ombudsman to allow for addressing individual complaints from persons exposed to gender-related violence;
 - Developing guidelines and indicators to enhance the institutional capacity of municipalities in better fulfilling their obligation to protect women;
 - Considering ratification of the Council of Europe Convention on Action against Trafficking in Human Beings;
- (ii) Address root causes of violence against women by:
- Strengthening efforts to address the perpetuation of unequal gender power relations in the private sphere, including through measures at the school and preschool levels, to foster the development of male and female identities that break with notions of inequality and use of force;
 - Strengthening efforts, including those outlined in the National Action Plan to Combat Racism, Xenophobia, Homophobia and Discrimination, to protect persons belonging to ethnic or religious minorities from discrimination in the labour market, the justice sector and other key areas. Special measures should be considered to facilitate the equal participation of women and men with an immigrant, refugee or minority background in the educational system and the labour market. The Government should also strongly consider signing and ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families;
 - Acknowledging the diverse voices within different cultural groups and supporting those that respect and promote women's rights within their communities. Gender equality policies and efforts should avoid cultural essentialism and stigmatization by promoting gender equality as a universal culture that has emerged in response to a universal history of gender inequality;
- (iii) Prosecute and punish perpetrators of violence against women by:
- Pursuing a policy of zero tolerance of gender-based violence and sexual harassment, particularly in law enforcement. The police should adopt a proactive approach in investigating and documenting cases of intimate-partner violence, especially those amounting to a gross violation of a woman's integrity. Good practices in this regard should be documented and disseminated;
 - Ensuring specialized training for the police, medical personnel and other professionals who may have first contact with women exposed to violence on how to gather and document evidence in gender-based violence cases;
 - Fostering international cooperation in cases of violence against women with a transnational dimension, especially honour-related violence, and consider re-establishing a special unit on such violence in the National Criminal Investigation Department which can coordinate Sweden's work with that of other countries. At the same time, local police and justice sector personnel should continue to receive special training on the specific challenges related to particular manifestations of violence against women in different communities;
- (iv) Protect women at known risk of violence by:
- Issuing restraining orders against potential perpetrators of violence against women on the basis of a comprehensive, forward-looking risk assessment to prevent violence before it occurs. The police need to dedicate adequate resources to follow up restraining orders, detect breaches and initiate sanctions proceedings. Breaches should be consistently sanctioned with appropriate penalties;
 - Implementing the recommendations of the Inquiry on Social Services Support for Women Exposed to Violence. In particular, the Social Services Act should be amended to give women at risk of violence a legally enforceable claim against their local municipality to have their case comprehensively assessed and to receive all necessary protection and support (including, if needed, access to a safe and adequate shelter place);
 - Recognizing, along with the municipalities, the important role of non-governmental women's shelters and providing them with adequate funding for their core activities. Particular attention should be paid to the protection requirements of women with special needs, including women with substance-abuse problems, physically or mentally disabled women, young women and girls, and elderly women;

- Developing a long-term protection and support strategy for women under threat or at continued risk of violence, including providing them with access to housing with suitable security arrangements and special security provisions to allow for their contact with non-hostile family members. Guidance and psychological counselling should also be made available for victims in enabling them to establish a sustainable and safe life on their own;
 - Offering special protection and support to all women who remain in prostitution. Existing projects to support women in prostitution with strong substance-abuse problems should be maintained and expanded. If they choose, these women should be provided with immediate access to a drug addiction rehabilitation programme;
- (v) Expand the knowledge base on violence against women and related factors by:
- Strengthening efforts to implement the Official Statistics Ordinance's requirement of sex-disaggregated statistics. Unless there are special reasons for not doing so, sets of statistical information should be broken down by sex consistently in all tables and diagrams with sex as a primary and overall classification;
 - Commissioning a comprehensive study, conducted by independent researchers, of the Swedish policy on prostitution and its impact on human trafficking and other types of violence often occurring in the context of prostitution. The study should also consider the policy's long-term effects and its potential impacts outside of Sweden;
 - Commissioning a study on violence against Saami women, preferably through a joint initiative with the Governments of other countries with a Saami population;
- (b) To the municipalities and non-State actors:
- All municipalities, supported by the county administrative boards, should adopt action plans on violence against women that lay down clear objectives, identify shortcomings, suggest relevant measures and point out areas for development and enhanced cooperation between authorities and civil society. The action plans should be tailored to the local situation taking into account the specific manifestations of violence against women actually occurring in the municipality. Adequate resources must be dedicated to implement the plans. The plans and their state of implementation should be annually reviewed;
 - The women's movement should continue and strengthen efforts to integrate other constituencies into the struggle to achieve gender equality. Men who are genuinely willing to participate in appropriate initiatives should always be given the option to do so;
 - The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes, show sensitivity for the needs of victims and their families when reporting on violence against women, and base reports on empirical facts. The media, in collaboration with other civil society actors, should work towards overcoming discriminatory social attitudes towards women.

Switzerland

Introduction

During the period under review, the Special Rapporteur on racism visited Switzerland from 9 to 13 January 2006 (please refer to document A/HRC/4/19/Add.2).

86. The Special Rapporteur recommends that the Swiss authorities prepare, as a matter of priority, a comprehensive political strategy to combat racism, racial discrimination and xenophobia, focusing on three main areas:

- The Government's public expression of its political will to combat all forms and manifestations of racism, racial discrimination and xenophobia;
- Opposition to and condemnation of all racist and xenophobic political platforms;
- Recognition of, respect for and promotion of cultural diversity, and commitment to promote, in the long term, a democratic, egalitarian and interactive multiculturalism.

87. The Special Rapporteur therefore recommends that the Government make available the appropriate means, mechanisms and institutions to implement this political will, in particular by:

- Drafting, in cooperation with all political parties and in consultation with civil society organizations and representatives of national, ethnic, cultural and religious minorities, of comprehensive national legislation and a national programme of action to combat racism, racial discrimination and xenophobia. At the institutional level, the Special Rapporteur recommends two measures:
- In order to address the current rise in xenophobia, the Government should strengthen the Federal Commission for Foreigners and the Federal Commission against Racism with regard to material, budgetary and human resources and their authority and capacity for action and intervention. The Service for Combating Racism should also be strengthened;
- In order to ensure a holistic approach that takes account of common underlying sources and of the link between all forms of discrimination, the Government should establish a federal commission to promote human rights and combat all forms of discrimination relating to race, religious belief, gender, age, disability and sexual preference. Bearing in mind the urgency of questions relating to racism and xenophobia, the commission should attach high priority, at the initial stage, to combating racism and xenophobia. The commission's mandate should incorporate the current mandates of the Federal Commission against Racism and the Federal Commission for Foreigners. The commission should be structured around subcommissions relating to each of these forms of discrimination and should be granted administrative, legal and normative powers of investigation, action and appeal with respect to all forms of discrimination, as well as the appropriate human, material and financial resources. Its budget should be allocated by the Federal Assembly. The president and members of the commission should be appointed by the Federal Assembly at the proposal of the Government, in consultation with political parties, civil society organizations and all cultural, religious and linguistic communities, in order to reflect the diversity of Swiss society and the necessary balances. The commission should submit an annual report to the Federal Assembly containing an assessment of the situation and action-oriented recommendations for ensuring the promotion of and respect for human rights, and for combating all forms of discrimination. The commission should be administered by a technical secretariat under its authority, either by the transfer, strengthening and transformation of the current Service for Combating Racism, reinforced with additional human, material and budgetary resources, or by a new mechanism. This service should be given the mandate of follow-up, collection of statistical data, and recording and analysing incidents, manifestations and expressions of discrimination, for the commission.

88. The Special Rapporteur recommends that the resources provided to independent bodies that combat racism should be maintained, if not increased.

89. The Special Rapporteur is aware of the challenges arising from Switzerland's federal structure and the division of powers between the Confederation and the cantons. He nevertheless considers that the authorities should establish appropriate mechanisms to address the shortcomings in the area of protecting individuals against racism and racial discrimination. In this regard, he endorses the recommendations made by the Committee on the Elimination of Racial Discrimination in 2002, particularly the assertion that "the Federal Government has the responsibility of ensuring the implementation of the Convention on its entire territory and must ensure that cantonal authorities are aware of the rights set out in the Convention and take the necessary measures in order to respect them" (CERD/C/60/CO/14, para. 8).

90. With regard to incidents of police violence, the Special Rapporteur wishes to remind the federal and cantonal authorities of their obligations under international norms for the protection of human rights, which apply to everyone without distinction. In this regard, he strongly recommends, pending the establishment of the aforementioned federal commission, the creation of independent mechanisms to investigate allegations of racism, racial discrimination, xenophobia and related intolerance by various bodies and administrations at the federal, cantonal and communal levels.

91. The Special Rapporteur, having noted the weakness of Swiss administrative and civil legislation regarding protection against discrimination, particularly in the areas of housing, employment and access to public places, considers that Swiss legislation in these areas should explicitly incorporate effective anti-discriminatory and anti-racist norms. Swiss law should also provide for legislation for the implementation of anti-racist norms, and provide for compensation or reparation.

92. The Special Rapporteur supports the planned adoption by the Swiss authorities of two articles to supplement article 261 dealing with distinctive symbols of a discriminatory attitude based on race or the public use of slogans, gestures or forms of salutation with a racist meaning, and with the criminalization of the creation of, or participation in, groups that intend to commit acts prohibited under article 261 bis.

93. He also recommends that Swiss legislation introduce the right of associations and non-governmental organizations to appear in court and act on behalf of victims, since this would provide better protection for persons who are reluctant or unable to take their cases to the courts.

94. The Special Rapporteur encourages the Swiss authorities to withdraw the reservations to article 2, paragraph 1 (a), and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

95. The Special Rapporteur is aware that the legal strategy alone cannot combat prejudices which, in Switzerland as elsewhere, are deeply rooted in history and culture. He therefore recommends that the political and legal strategy be supplemented by a cultural and ethical strategy with the aim - in order to overcome the deadlocks and tensions of an ideological and partisan management of de facto uncontrolled multiculturalization - of the voluntary, gradual and long-term construction of a democratic, egalitarian, non-discriminatory and interactive multiculturalism centred around two related areas: the promotion of reciprocal knowledge among communities reflecting the diversity of Swiss society and the promotion of interaction and cross-fertilization among these communities. Action must be taken, here and now, to promote fruitful and non-antagonistic coexistence, the dialectic of unity and diversity, the founding principle of Swiss federalism, bearing in mind the current twofold challenge of the growing complexity of diversity as a result of non-European and non-Christian immigration, and of the dynamic of attempts to defend identity, which is exploited for political ends.

96. The Special Rapporteur considers that certain awareness-raising and training initiatives undertaken within State bodies, such as the training of the Basel City police force, are very positive, and recommends that they be undertaken in all cantons. He also recommends that the Government increase, to the extent possible, the recruitment, at all State levels, of staff from among the immigrant population and the various foreign communities, and promote comprehensive intercultural training in all State services and institutions that deal with immigration and the situation of foreigners, in particular the police and border authorities, airports, stations, etc.

97. The Special Rapporteur strongly recommends that civil society organizations make use of the United Nations mechanisms available to them, both treaty body mechanisms, such as the Committee on the Elimination of Racial Discrimination, and the special procedures, and transmit to these bodies relevant information concerning possible human rights violations as a result of the application of laws such as the Act on Foreign Nationals or the Asylum Act. In this regard, he encourages civil society to record and document acts of racism, racial discrimination and xenophobia. He wishes to commend the non-governmental organizations that have already taken steps in this regard.

Turkey

Introduction

During the period under review, the Special Rapporteur on counter-terrorism, the Working Group on Arbitrary Detention and the Special Rapporteur on violence against women visited Turkey.

The Special Rapporteur on counter-terrorism visited Turkey from from 16 to 23 February 2006 (please refer to document A/HRC/4/26/Add.2).

90. Regarding the definition of terrorism:

- (a) The definition of terrorist crimes should be brought in line with international norms and standards, notably the principle of legality as required by article 15 of ICCPR, including defining more precisely what crimes constitute acts of terrorism and confining them to acts of deadly or otherwise grave violence against persons or the taking of hostages (for more on the definition of terrorism see also E/CN.4/2006/98, paragraphs 26-50);
- (b) The need for a separate definition of “terrorism”, beyond acts that in themselves constitute terrorist crimes, should be reconsidered;
- (c) International conventions for the elimination of terrorism should be carefully taken into account when drafting new legislation against terrorism;
- (d) With regard to possible legislative amendments, the Special Rapporteur offers to engage in further dialogue before and during discussions at the Parliament. He emphasizes that, in a democracy, draft legislation touching upon questions of fundamental rights and freedoms should be discussed openly and transparently and that civil society should be fully involved in these debates at all stages;
- (e) If a need exists to classify some organizations linked to terrorist crimes as terrorist organizations, with adverse legal consequences, the procedure for such designation should be transparent and objective, and organizations should be able to appeal to an independent judicial body; and
- (f) The Special Rapporteur is of the opinion that only full clarity with regard to the definition of acts that constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as “crimes of opinion” are not abused for purposes other than fighting terrorism.

91. Regarding the investigation of allegations of torture and extrajudicial killings and the fight against impunity:

- (a) The Special Rapporteur recommends the creation of an independent and impartial investigation mechanism with the power to investigate promptly allegations of torture or other ill-treatment. It is crucial that such a mechanism be located outside the institution that is alleged to have committed the acts of torture under investigation;
- (b) The Special Rapporteur recommends that a rapid procedure be established through which persons convicted of or charged with terrorist crimes can obtain a retrial, an amnesty or a pardon, in cases where the evidence used against them does not meet the current standard of zero tolerance in respect of torture;
- (c) The Special Rapporteur trusts that impartial, thorough, transparent and prompt investigations and fair trials are carried out in relation to the incidents in Semdinli and Kiziltepe. The objectivity, impartiality and thoroughness in conducting such investigations are necessary prerequisites for the public to enjoy confidence in such proceedings; and
- (d) He encourages Turkey to ratify the Optional Protocol to the Convention against Torture. In order to combat any remnants of impunity and to strengthen the international protection of human rights he also recommends Turkey to ratify the Rome Statute of the International Criminal Court.

92. Regarding the victims of terrorism and prevention of terrorism:

- (a) Whereas the adoption of the Act on Compensation of Victims of Terrorism is a very laudable step in the right direction, the Special Rapporteur would like to remind the Government that it is confined to material

compensation and falls short of full restitution and rehabilitation. Hence, measures should be taken to address rehabilitative and other needs of victims of violence related to terrorism and counter-terrorism;

(b) One means of providing restitution is through ensuring a safe environment conducive to enable persons who so wish to return to their previous villages. In this context, the Special Rapporteur recommends that the process of phasing out the village guards be accelerated and clearly articulated;

(c) The Special Rapporteur is of the opinion that, in the long run, full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism; and

(d) In order for all inhabitants of Turkey to fully enjoy their human rights without discrimination and to feel fully included in society, persons belonging to different cultural and linguistic groups, including the Kurdish population, should enjoy protection of their cultural, linguistic and religious rights, including the possibility to freely use their language in public and private. In particular, effective access to education for the Kurdish population should be enhanced through, at least, initial immersion in their mother tongue.

93. Regarding international cooperation, the Special Rapporteur requests relevant international organizations to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

The Special Rapporteur on violence against women visited Turkey from 22 to 31 May 2006 (please refer to document A/HRC/4/34/Add.2).

73. There is a dynamic women's movement in Turkey and many individual women have demonstrated a high level of performance in all walks of life, and yet this potential is excluded from formal politics. The development indicators for women are in dire contrast to the country's aspirations, its legal and constitutional provisions and its international commitments. Violence against women in the private sphere is systematic and widespread. A nationwide mobilization for the advancement of women - with political will and commitment - is urgently needed to turn promises into reality.

74. The suicides occurring in eastern and South-eastern Anatolia are intimately linked to gender-based violence, which itself is embedded in the overall parameters of women's status in the country, the regional sociocultural particularities, its overall underdevelopment as well as the ensuing political/ethnic tensions that have made the region a site of turmoil. Particularly, the situation of women in the region is entrenched in the complex ties of tribalism, ethnic politics, patriarchy and national integration policies. Therefore, the high rate of female suicides in the region cannot be approached as isolated, individual incidents.

75. Limited opportunities for women in the region and their limited access to education, employment, information, health services and justice are major constraints to their rights as citizens, potential political power, ability to negotiate the terms of their existence and finding redress for their problems. Local women's voices must be heard and their initiatives supported. Without a reliable institutional and legal framework guaranteeing their rights and protection, women's individual and collective resistance can bring fatal consequences.

76. More specifically, there are reasonable grounds to assume that some recorded cases of suicides in fact constitute grave violence, either because the victim was forced to commit suicide or because a murder was disguised as a suicide. Patriarchal oppression, manifesting itself in diverse forms of violence against women, including forced marriage, early marriage, incestuous sexual abuse and honour-related violence, is often a factor that underlies suicides.

77. I examined the issue of women's suicides from a human rights perspective and have looked at root causes to the extent that they relate to my mandate. The prevention of suicides is a multifaceted issue requiring interventions at many levels. There may be room for improvement with regard to crisis hotlines and other institutions offering help to persons at immediate risk of suicide. Access to the most lethal means of suicide,

including firearms and highly toxic pesticides, which remain easily accessible in the country's rural areas, should also be better controlled. In devising a specific suicide-prevention strategy, the Government may wish to enlist the technical cooperation of specialized international agencies such as the World Health Organization.

78. I would like to make the following recommendations to combat violence against women, its causes and consequences, including women's suicides.

79. The Government should:

Promote and endorse the advancement of women:

- Launch a nation-wide campaign to bridge the gender gap in all political, economic and social spheres, dedicate sufficient funds from the budget and develop time-bound benchmarks;
- Ensure that all girls complete primary education as required by article 28 of the Convention on the Rights of the Child, close the gender gap in secondary education and, to this end, increase spending and resource allocation for education and prioritize girl's education in the region;
- Establish an indicator system to monitor educational quality and outcomes in all schools, with gender equality as a key indicator;
- Support, with sufficient resources, State and non-governmental initiatives allowing women and girls to meet outside family circles and engage in empowerment activities (e.g. social centres for women);
- Promote, through public campaigns, gender roles and relations compatible with human rights and gender equality norms, including masculine images de-linked from domination and violent expressions of power;
- Strengthen the legal and institutional framework:
- Amend article 10 of the Constitution to include temporary positive measures to redress deep-rooted gender inequalities;
- Promote the creation of a Gender Equality Commission in the National Assembly, mandated to develop legislative proposals to enhance women's rights and mechanisms for the State to fulfil its constitutional responsibility to implement these rights. The Commission should also be tasked with actively monitoring the implementation and practical effect of legislative reforms from a gender perspective;
- Encourage political parties to improve women's representation in politics, including through quotas, especially in the National Assembly;
- Amend remaining discriminatory articles in the Penal Code, such as article 287, which allows virginity testing without the woman's consent under certain circumstances and article 104 that may be interpreted as criminalizing consensual sexual relations between teenagers aged 15 to 17;
- Ensure that the necessary legal, institutional and budgetary requirements are met for the implementation of the Prime Minister's Circular on Violence against Women (2006/17);

Implement a zero-tolerance policy towards all forms of violence against women:

- Adopt a holistic strategy to address the root causes of female suicides and pay particular attention to linkages with gender-based violence and other forms of gender discrimination;
- Mandate law enforcement officials to diligently record, investigate and prosecute all acts of violence against women;
- Train judges, prosecutors and law enforcement officials on gender aspects of the new Penal Code and introduce a gender perspective to curricula of institutions for law professionals and law enforcement and security officers;
- Denounce publicly and unequivocally all forms of violence against women and not invoke any custom, tradition or religious consideration to justify or excuse such violence;

Identify, prosecute and adjudicate cases of forced suicide and disguised murders:

- Ensure that the law enforcement authorities investigate suicides, accidents and other violent deaths of women and girls with particular diligence. In all cases of suicides, accidents or other violent deaths involving women and girls, a full-scale medical autopsy performed by specialized forensic experts should be required. Where there is indication that a suicide may be involuntary, a psychological autopsy should be carried out;

- Prosecutors and judges should not hesitate to apply article 84 of the Penal Code (instigation to commit suicide), whenever it is warranted. The highest sentences should be sought and given for all murders that serve to control women or curb their personal autonomy regardless of whether the crime is committed in the name of honour or custom;

Protect women at risk of violence:

- Lawyers and prosecutors should use the Law on the Protection of the Family in all appropriate circumstances and seek protective orders for women at risk. Courts should diligently enforce protective orders granted and not hesitate to apply sanctions in cases of infractions;
- Urgently implement the Local Administration Law stipulating the creation of shelters in municipalities with more than 50,000 inhabitants. Make available matching funds from the national budget to co-finance the creation and maintenance of all municipal shelters. Provide funds and support to NGO-operated shelters. Create a National Shelter Coordination Board that places women at risk in appropriate shelters ensuring utmost confidentiality and security to all shelters;
- Institute special social support, training and protection programmes to help women, who cannot safely return to their families, to establish an independent life in a new location and, if necessary, under a changed identity;

Improve the database on violence against women, its causes and consequences:

- The Turkish Statistical Institute, in cooperation with other relevant authorities, should develop and include in the *Statistical Yearbook* comprehensive statistics on reported cases of the major forms of violence against women prevalent in Turkey;
- The Directorate on the Status of Women, in cooperation with relevant international agencies, should commission a national survey on violence against women based on a representative sample of the female population;
- The Ministry of Health, in cooperation with WHO, should commission a study on the root causes of male and female suicides in Turkey, including linkages with violence and discrimination;
- The Government should compile and report to WHO gender- and age-disaggregated mortality data in accordance with the International Classification of Diseases (ICD-10);
- Work with bar associations in the region to undertake surveys of court cases concerning crimes against women, including suspicious suicides and honour-related crimes and collect data and report on the situation of women, particularly those belonging to marginalized groups, and develop action plans accordingly to address the problems;
- Security forces (police and gendarmerie) should commission a periodic analysis of recorded cases of crimes against women, including suicides and disseminate the results widely;

Take additional suicide prevention measures:

- Enlist the technical support of the WHO's Suicide Prevention Programme to devise a national suicide-prevention strategy;
- Enhance capacity of the Ministry of Health's Crisis Intervention Centres and train teachers, health workers and other professionals who are in close contact with persons at risk of suicide;
- Improve the control of lethal means used in suicides, including firearms and highly toxic pesticides, and consider ratifying and fully implementing the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants;
- Collaborate with and support local women's groups working to enhance women's rights.

80. I recommend to civil society that:

- The media avoid gender stereotypes and discriminatory social attitudes towards women and show sensitivity and respect for the victims and their families when reporting incidents of violence against women; observe confidentiality in reporting on women under protective care; report on suicides and incidence of violence in a factual and responsible manner without sensational coverage and graphic footage; and always provide information on helplines and other resources for persons at risk;

- The media and other civil actors should promote public discussions to demystify patriarchal perceptions of honour, custom and tradition and emphasize alternative visions that are compatible with equality and human rights values;
- Mainstream human rights organizations should prioritize gender equality and the human rights of women, including women's right to live a life free of violence, in their advocacy and lobbying work;
- Women's organizations, bar associations and human rights organizations should collaborate in monitoring the implementation of the Penal Code in cases of violence against women;
- Professional associations should disseminate the WHO Guidelines on Preventing Suicide.

81. I recommend to the international community that it:

- Prioritize, through bilateral and multilateral funding, support for the initiatives of local women's groups, research institutes and academia for research, advocacy and operational projects that aim to contribute to the advancement of women, especially rural and socio-economically marginalized women;
- Provide sufficient resources to strengthen the capacity of the United Nations country team to integrate the promotion and protection of women's rights into all of its activities.

The Working Group on Arbitrary Detention visited Turkey from 9 to 20 October 2006 (please refer to document A/HRC/4/40/Add.5).

100. On the basis of its findings, the Working Group would like to make the following recommendations to the Government.

101. With regard to detention on terrorism charges, the Working Group recommends:

- The amendment of the definition of terrorism with a view to limiting the scope thereof, as recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
- As a matter of urgency, the release of detainees detained for more than 10 years without having been found guilty. Measures should also be taken with regard to those held for more than 10 years on remand, even if they have already been found guilty at first instance. The Government should further ensure that article 102 (2), when it enters into force, is understood by judges and prosecutors as limiting remand detention to three years (i.e. six years in terrorism cases under article 252 (2) CPC, the provision doubling the time limits for remand detention of defendants charged with terrorism offences);
- As a further matter of urgency, that the legislator introduce legislation clarifying that article 148 (4) CPC should be applied in all ongoing proceedings, whether the declaration to the police was made before or after the entry into force of the new CPC;
- The lifting of the limitation on the number of defence counsel in terrorism cases.

102. With regard to detention in the juvenile justice system, the Working Group recommends:

- Increasing efforts to fully implement the principle that deprivation of liberty shall be the last resort for juvenile offenders and to limit periods of remand detention by expediting proceedings in juvenile cases;
- Amending the law in order always to provide for the separate trial of defendants who are charged with having committed an offence as minors;
- Ensuring that the specialized police departments, prosecutors' offices and courts for juvenile offenders provided for by law are established covering the entire territory of Turkey, and that a sufficient number of social workers are hired to assist those specialized institutions, as provided by law.

103. With regard to forms of deprivation of liberty outside the criminal justice process, the Working Group recommends:

- As a matter of urgent priority, the enacting of a law creating a framework for the detention of foreigners whose detention is considered necessary to ensure the implementation of migration laws. Even before this legal framework is established, the competent police departments should start issuing decisions to all foreigners assigned to guest houses indicating, inter alia, the remedies available to contest such decisions, which should include judicial review;
- Enacting legislation governing involuntary commitment to psychiatric hospitals.
- To this end, the Government may wish to consult the Working Group's deliberation No. 7 on psychiatric detention;
- Reviewing other forms of administrative detention with a view to ensuring (i) that they are actually in accordance with the law and necessary; and (ii) that judicial control is effective;
- Opening all places of administrative deprivation of liberty to regular inspection by one or more independent oversight bodies.

Ukraine

Introduction

The Special Rapporteur on sale of children visited Ukraine from 22 to 28 October 2006 (please refer to document A/HRC/4/31/Add.2).

73. The lack of a separate juvenile justice system is a major gap in the protection of children's rights. Therefore, the Special Rapporteur recommends the establishment of such a separate justice system for minors in conformity with international standards. Such a system should encompass different courts dealing with young offenders. Moreover, the law enforcement agencies, such as the Prosecutor's Office, should have separate units for judicial proceedings involving minors, not only when they are in conflict with the law, but also when they testify as witnesses in cases involving child trafficking, prostitution or pornography. The Special Rapporteur also recommends setting up separate detention facilities (police stations, pretrial investigation centres and remand facilities). The Special Rapporteur nevertheless believes that only serious crimes committed by minors should result in detention.

74. In order to better protect the interests of all children and help formulate a clear policy on children's rights and issues, the Special Rapporteur, in line with the concluding observations of the Committee on the Rights of the Child regarding Ukraine, recommends to create a high-level independent institution, such as a National Commission on Children, Youth and Family dealing specifically with enforcing children's rights and public policies with regard to children. Such an institution would be headed by a respected and non-partisan personality and could benefit from the assistance of the Ministry of Youth, Family and Sports. NGOs and civil society should be an integral part of this mechanism. In formulating such policy, this institution should take into account positive experiences of other countries, as well as programmes developed by NGOs and the private sector.

75. With regard to legislation, the Special Rapporteur recommends that Ukraine: (a) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture, the United Nations Convention against International Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

- (b) Officially decriminalize prostitution and define the age of sexual consent;
- (c) Clearly define the crimes of child pornography;
- (d) Allow children to file, without parental consent, complaints of abuse;
- (e) Improve procedures related to legal guardianship when families are involved in trafficking in their children;
- (f) Adopt a law on clear and accessible procedures enabling victims of trafficking to get compensation;
- (g) Continue to conclude bilateral agreements on anti-trafficking measures with destination countries, especially with the Russian Federation which has a long common border with Ukraine and with which there are no bilateral agreements;
- (h) Examine the possibility of concluding agreements with other European countries in order to receive training for social educators.

76. To facilitate the law enforcement, the Special Rapporteur recommends:

- (a) To give more powers and resources to police units such as the anti-trafficking unit, the child protection unit and the Interpol unit, and to consider how to deal with victims of trafficking, domestic violence and sexual abuse;
- (b) To establish a system of witness protection in cases of trafficking. Witnesses must be given not only protection but also incentives to testify;

- (c) To coordinate the actions of the Frontier Police with those of the other institutions working under the Ministry of Internal Affairs;
- (d) To address the problem of corruption, especially in the law enforcement and judiciary sectors. Codes of conduct, incentives for reporting unethical behaviour and other initiatives can be introduced in the public administration;
- (e) To regulate strictly the numerous dating and marriage agencies which often constitute a disguised form of prostitution and trafficking which occasionally may involve minors;
- (f) To set up a national toll-free telephone line accessible everywhere to report complaints and cases of trafficking in children or disappearances, and to offer children assistance in all confidentiality.

77. Concerning boarding schools, the Special Rapporteur insists that children in shelters and orphanages and those who find themselves in vulnerable and disadvantaged situations should not be forgotten. He recommends:

- (a) To transform large-scale institutions into smaller boarding schools in order to create an environment where each child could grow and develop the skills that would allow him or her to become a fully integrated adult in tomorrow's society;
- (b) To place children deprived of parental care from birth till the age of three in foster families as they should not stay at boarding facilities;
- (c) To facilitate procedures of adoption, giving priority to foster families with all the help and resources to assist them adequately, and then to adoption inside the country and international adoption;
- (d) To introduce the system of "specialized educator" to work at specialized institutions for minors.

78. Alternatives to placement in orphanages must be sought whenever possible. The establishment of a deinstitutionalization commission would be a welcomed alternative and would be able to look individually at the options for every child deprived of a family environment. Besides, a new policy regarding adoption is needed, with a national agency in charge of setting up a transparent policy and ensuring rigorous selection in the placement of children, always ensuring that the interest of every child remains the main criterion and that this placement is free from corruption or political intervention.

79. To be effective, policies and programmes to fight trafficking and sexual exploitation of children must address the root causes of the phenomenon. Social exclusion and discrimination are major root causes. In order to deal with such vast, comprehensive and ultimately rather vague concepts, the Special Rapporteur suggests targeting groups affected in different ways and to different extent by social exclusion, discrimination and stigmatization. These include street children, victims of sexual abuse and domestic violence, children at boarding facilities or who recently left them, children from dysfunctional and poor families with a low level of education. The Special Rapporteur recommends strengthening the role of local social services in proactively identifying and referring children at risk; monitoring standards of care; assessing the situation and developing community child and family protection plans; and serving as focal point for coordinated referral and response. The Special Rapporteur also recommends that, in the curriculum of primary and secondary schools, special attention is paid to the issues of trafficking in the global human rights perspective as well as to the struggle against corruption.

80. The collaboration between the State and civil society needs improvement. New mechanisms should be developed to enhance collaboration with NGOs and the private sector. The State should collaborate and delegate to capable and credible NGOs those services that would be delivered more efficiently by more flexible organizations than by the public administration. The Special Rapporteur recommends the creation of mechanisms to allow the State to subsidize NGOs attending vulnerable children and youth through public funds. The Special Rapporteur also invites NGOs not to limit their activities to the delivery of social services but to be more vocal in their advocacy role.

81. The Special Rapporteur encourages the Government to seek the assistance from the United Nations Country Team (UNCT) and other international organizations in implementing the recommendations of this

report. In particular, the UNCT can provide assistance in monitoring the implementation of the national strategies on children and in combating child trafficking; in carrying out evaluations of rehabilitation programmes for victims of trafficking and in setting up a system to monitor standards of care provided by social services; as well as in institutional and capacity-building initiatives, including assessing and drawing lessons from experience of coordination and institutional set ups on children operating at the local level; in providing guidelines and tools to set up a separate juvenile justice system and an independent high-level institution for the promotion and protection of children's rights and interests.

OCCUPIED PALESTINIAN TERRITORIES

Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 visited the Occupied Palestinian Territories from 7 to 17 June 2006 (please refer to document A/HRC/4/17).

63. The Occupied Palestinian Territory is of special importance to the future of human rights in the world. Human rights in Palestine have been on the agenda of the United Nations for 60 years; and more particularly for the past 40 years since the occupation of East Jerusalem, the West Bank and the Gaza Strip in 1967. For years the occupation of Palestine and apartheid in South Africa vied for attention from the international community. In 1994, apartheid came to an end and Palestine became the only developing country in the world under the subjugation of a Western-affiliated regime. Herein lies its significance to the future of human rights. There are other regimes, particularly in the developing world, that suppress human rights, but there is no other case of a Western-affiliated regime that denies self-determination and human rights to a developing people and that has done so for so long. This explains why the OPT has become a test for the West, a test by which its commitment to human rights is to be judged. If the West fails this test, it can hardly expect the developing world to address human rights violations seriously in its own countries, and the West appears to be failing this test. The EU pays conscience money to the Palestinian people through the Temporary International Mechanism but nevertheless joins the United States and other Western countries, such as Australia and Canada, in failing to put pressure on Israel to accept Palestinian self-determination and to discontinue its violations of human rights. The Quartet, comprising the United States, the European Union, the United Nations and the Russian Federation, is a party to this failure. If the West, which has hitherto led the promotion of human rights throughout the world, cannot demonstrate a real commitment to the human rights of the Palestinian people, the international human rights movement, which can claim to be the greatest achievement of the international community of the past 60 years, will be endangered and placed in jeopardy.