

Rapport de position/Position paper

Commission des droits de l'Homme des Nations unies UN Commission on Human Rights

62^e (et dernière) session

Performing the Protection Mandate

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Introduction

From the CHR to the HRC: Performing the Protection Mandate

As we publish our position paper for the coming 62nd session of the UN Commission on Human Rights (the Commission), information on the modalities of the conduct of this session are still not decided upon.¹

This session will be the last session of the CHR, prior to the establishment of the UN Human Rights Council, following the decision of Heads of States and Governments taken at the Millenium +5 Summit in September 2005, to replace the Commission with the Human Rights Council.

Some advocate for this ultimate session to be one of transition, a procedural and shortened session. Whatever the transitional arrangements, FIDH would like this session to still remain an opportunity for the Commission and its member States to perform the protection mandate, with which they were—and still are—entrusted.

There are four pillars to this protection mandate, in the activities and organisation of the Commission, that FIDH believes should remain untouched:

- the Commission special procedures, which were mandated by the 61st CHR to conduct studies, monitor, engage in dialogue with countries and send urgent allegations of human rights violations, should be able to present their work. Such work should be fully acknowledged and debated. Mandates that come to an end at this session should be renewed.

- Member States of the Commission should preserve their possibility to react to human rights situations, including grave violations of human rights in different countries. The deterrent effect of such reaction is not to be proven, it should therefore not be avoided.²

- The ability for human rights defenders to adress the Commission and take part in the debates, voicing their preoccupations to the international community, should be fully main-

tained. For FIDH, the speaking time of human rights defenders is an integral part of the protection mandate of the CHR. Their constituencies have adressed messages to the international community that need to be heard.

- The activities of the Commission in standard setting should be subject to appropriate pursuance or adoption.

In short, the best legacy that Member States can help build of this Commission, will be their determination that it performs its protection mandate in the best possible way, till its very end. The situations and issues of concern documented in the present position paper result from FIDH and its member organisations' analysis that they require international reaction. We urge you to consider them in application of the protection mandate.

Finally, FIDH would like to echo concern at States which repeatedly refuse to cooperate with the Mechanisms created by this body. In doing so, they undermine the purpose of the establishment of the only human rights mechanisms with universal review. FIDH already expressed the view that States which repeatedly refuse to cooperate should ultimately be banned from sitting in the CHR.

In addition to those States, FIDH wishes to express its utmost preoccupation over situations in which persons have been intimidated or suffered reprisals for having cooperated with United Nations human rights bodies, for having availed themselves of international procedures, for having provided legal assistance for this purpose, and/or as relatives of victims of human rights violations, such as documented in the Secretary General's report to this Commission (E/CN.4/2006/30). In particular, FIDH calls upon the Commission to take action upon States whose reaction to letters of allegations concerning those specific acts are gravely insufficient, **China, Tunisia and Uzbekistan.**

1. The present report was published on February 20, 2006.

2. For the 62nd session, in addition to the countries listed in the present position paper, FIDH calls for the extension of the existing country-mandates on Burundi, Cambodia, DPRK, Liberia, Myanmar and Somalia.

I. Situations géographiques/Geographic Situations

Afrique/Africa

Côte d'Ivoire/Ivory Coast

Droits et Démocratie, la FIDH et le Mouvement ivoirien des droits humains (MIDH) sont fortement préoccupés par le retard pris dans l'application des Accords de Linas-Marcoussis et de Pretoria, qui s'est traduit par le report des élections nationales initialement prévues le 30 octobre 2005.

Ainsi, nos trois organisations se sont félicitées de la nomination récente du nouveau Premier ministre mais déplorent les querelles internes à la Commission électorale nationale indépendante qui retardent l'établissement du cadre électoral et prolongent la période de transition dans une situation d'insécurité.

En effet, Droits et Démocratie, la FIDH et le MIDH sont vivement préoccupés par les importantes menaces contre la sécurité et la stabilité sur toute l'étendue du territoire ivoirien, du fait du non-désarmement des combattants et des milices et de la présence de groupes extrémistes comme les Jeunes Patriotes. Cette situation entraîne une criminalité galopante, des violations quotidiennes des droits de l'Homme et, selon les propos de l'ONUCI, peut générer *"une crise majeure accompagnée de violences et d'émeutes comme celles dont Abidjan a été le théâtre en novembre 2004"*, comme le souligne le secrétaire général des Nations unies dans son rapport daté du 03 janvier 2006.

Ainsi, les tensions et violations graves des droits de l'Homme se sont multipliées ces derniers mois. À Abidjan, les forces de l'ONUCI sont menacées et sont empêchées de circuler dans les quartiers de la capitale où se regroupent les jeunes patriotes. Dans l'ouest du pays, des litiges fonciers continuent d'être la source de nombreux massacres ethniques commis principalement par des milices. Des actes de banditisme et autres activités criminelles ont également été recensés dans la zone de confiance, du fait des infiltrations récurrentes d'éléments issus tant des Forces nouvelles que des Forces de défense et de sécurité. Dans le nord du pays, des violations des droits de l'Homme sont également recensées quotidiennement par les forces de l'ONUCI.

Le secrétaire général des Nations unies confirmait dans son rapport de janvier 2006 *"la persistance de graves violations*

des droits de l'Homme commises sur l'ensemble du territoire contre la population civile par des milices, armées ou non, appartenant aux deux camps du conflit. Ces violations sont perpétrées pour la plupart sous des motivations politiques ou ethniques."

En conséquence, Droits et Démocratie, la FIDH et le MIDH demandent à la Commission des droits de l'Homme de :

1. Condamner les graves violations des droits de l'Homme perpétrées en Côte d'Ivoire ;
2. Demander au Conseil de sécurité des Nations unies un renforcement des effectifs militaires et policiers de l'Opération des Nations unies en Côte d'Ivoire (ONUCI) ;
3. Demander

Aux parties en conflit

- De cesser immédiatement les hostilités, de se conformer strictement aux Accords de paix et, en tout état de cause, de respecter le droit international humanitaire et le droit international des droits de l'Homme.

Aux autorités ivoiriennes

- De respecter strictement et mettre en œuvre les résolutions 1632(2005), 1633 (2005), 1643(2005) et 1657 (2006) du Conseil de sécurité des Nations unies ;

- De mettre en œuvre les recommandations du rapport d'enquête du Haut commissariat aux droits de l'Homme sur la situation des droits de l'Homme en Côte d'Ivoire depuis le 19 septembre 2002 jusqu'au 15 octobre 2004, conformément aux dispositions de l'annexe VI de l'Accord de Linas-Marcoussis et à la Déclaration du président du Conseil de Sécurité du 25 mai 2004 (PRST/2004/17) ;

- De mettre en œuvre les mesures prévues par les Accords de paix, y compris le programme de désarmement, le démantèlement et le désarmement des milices, le redéploiement de l'administration, l'identification des nationaux, l'inscription

des électeurs sur les listes électorales et l'organisation d'élections libres, régulières, ouvertes et transparentes.

Au Premier ministre ivoirien

- D'élaborer, conformément aux recommandations du Conseil de paix et de sécurité de l'UA, la feuille de route de la transition, en coopération avec le Groupe international de travail et le Groupe de médiation.

Aux forces de l'ONUCI

- Conformément à leur mandat, d'aider le Gouvernement de réconciliation nationale à exécuter le programme national de désarmement, démobilisation et réinsertion des combattants ;

- Faciliter la libre circulation des personnes et des biens et le libre acheminement de l'aide humanitaire, notamment en aidant à créer les conditions de sécurité nécessaires ;

- Contribuer à la promotion et à la défense des droits de l'Homme en Côte d'Ivoire en prêtant une attention particulière aux actes de violence commis contre les femmes et les filles, et aider à enquêter sur les violations des droits de l'Homme pour mettre fin à l'impunité.

Au Procureur de la CPI

- D'ouvrir une enquête sur les crimes de la compétence de la Cour commis sur l'ensemble du territoire ivoirien depuis le 1^{er} juillet 2002, conformément à l'article 12.3 du Statut de la Cour pénale internationale.

Égypte/Egypt

FIDH and its member organisations in Egypt, the Egyptian Organisation for Human Rights (EOHR) and the Human Rights Association for the Assistance of Prisoners (HRAAP) are deeply concerned by the human rights situation in Egypt.

Infringements on the right to peaceful assembly and disproportionate use of force

Strikes and peaceful demonstrations are still considered punishable offences in Egypt. FIDH is deeply concerned by the recurrent disproportionate use of force by Egyptian security forces against demonstrators as it was on 30 July 2005, during a demonstration gathering around 200 demonstrators in Cairo to protest President Hosni Mubarak's intention to seek a fifth mandate.

On 30 December 2005, the Egyptian Security Forces evacuated by force around 1,500 Sudanese migrants and refugees who were settled since 29 September 2005 in front of UNHCR headquarters. Some 2,000 police officers surrounded the improvised encampment, fired water canons into the crowd and beat individuals with clubs to end the sit-in. Reportedly at least 27 individuals died and many others were injured following the attack. Hundreds of migrants and refugees were detained. As of today, some are still in custody. Egyptian authorities finally decided to not deport them and to grant them visas. Nevertheless, although Egypt is party to the Convention relating to the Status of Refugees and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), no specific law has been adopted dealing with refugees and migrants in accordance with its international obligations.

Violence and irregularities during the electoral process

The Egyptian elections, presidential and parliamentary, which took place in 2005 were marred with violence and irregularities.

The first multi-candidate presidential election constitute a step forward in the way to democracy, as well as procedural improvements during both electoral processes. However, all guarantees for a fair electoral process were not secured. Under amended Article 76 of the Egyptian Constitution, a Presidential Election Committee (PEC) was established with a vague mandate, which has been the cause of numerous

impediments: decisions of PEC were not subjected to judicial appeal; number of judges mandated to be member of the PEC were replaced with government lawyers and members of the administrative prosecution office; and, initially PEC refused to allow numerous civil society organisations from monitoring inside the polling stations and only made known its approval two hours after the start of the poll.

Despite some improvements in the organisation of the electoral process, irregularities and violent acts have been recorded: recurrent anomalies in electoral registers, political campaigns inside polling stations, obstacles to opposition representatives in entering the polling stations etc. it is also worth noting that 14 people have died during the parliamentary elections. At least 11 of them are believed to have lost their lives as a result of the excessive use of force by the police.

Freedoms of association and expression

Egypt still does not fully respect the freedom to form political parties, nor NGOs. The Political Parties Law (40 of 1977) allows impediments to the establishment and functioning of political parties. The law governing associations, NGO Law (84 of 2002), provides criminal penalties for "unauthorized" activities, including "engaging in political or union activities, reserved for political parties and syndicates," receiving funds without prior ministry approval and carrying out NGO activities prior to the organisation's formal registration are liable to a three-month prison term. A number of articles of the law violate both the Egyptian Constitution and international conventions ratified by Egypt.

Despite several presidential promises to amend the Penal Code to abolish prison sentences for press offences, nothing has happened. Attacks on press freedom are still common. Censorship is formally banned according to the 1971 Constitution, except for foreign publications and during the declaration of the state of emergency (see next section).

State of Emergency

A state of emergency has been in force in Egypt since 1981. In May 2006, the People's Assembly should have to decide its renewal or allow it to expire. FIDH considers that there is no justification for its continuation according to the legislative and international standards governing the declaration of a state of emergency.

The powers conferred on the authorities under Emergency Law 162 [1958] constitute a direct attack on due process and fundamental human rights. Article 3 provides for the President to order arrest of individuals without following the provisions of the Criminal Procedures Code, restrict freedom of movement and residence and impose censorship on all means of communication. It also permits him to widen the scope of his own powers through decrees such as decree no. 4[1992] which has been used to prosecute members of civil society.

Under Article 9, the President may transfer individuals accused of crimes under the Penal Code to the Emergency State Security and Emergency Supreme State Security Courts formed pursuant to Emergency Law 162. This violates the right of appeal and judicial independence (Article 14 of the ICCPR).

Military courts have also the jurisdiction, during a state of emergency, to hear all crimes. Military courts are composed of military judges appointed by the Minister of Defence, in violation of the principle of judges' security of tenure. Civilians tried in these courts, which hear cases carrying the death sentence, may only petition the Military Appeals Office for retrial before they are ratified (Article 111). Once verdicts have been ratified, only the President can approve a retrial (Article 12). Exceptional courts mostly ignored defendants' allegations of torture.

Arbitrary detention

An estimated 14,000 people remain in administrative detention some of whom have been detained for over ten years without facing charges, in violation of article 9 of the ICCPR.

On 7 October 2004, attacks against civilians occurred in Taba, in the Sinai Peninsula. Five men were reportedly arrested on charges of planning and carrying out the attacks but mass arrest campaigns occurred and some 3000 people were detained. Torture was largely used during the investigations by the Egyptian security forces. Numerous arrested persons still remain in detention without charge. Citizens of this region have also been victims of harassment and violence after cooperating with fact-finding missions organised by human rights organisations.

Following the bombing attacks at Sharm al-Sheikh on 27 July 2005, between 500-600 persons were reportedly arrested.

As of today, no information is available about whether they have been released or still detained.

Torture, Cruel, Inhuman and Degrading Treatment

Torture is endemic and has become a routine tool of investigation in police stations and prisons in Egypt. According to the Egyptian Organization for Human Rights, at least 28 people died as a result of torture in 2004 and 2005.

Despite few investigations and trials against Egyptian police officers charged with torture practices against detainees, perpetrators of torture are protected by weak anti-torture legislation which restrict torture to any act committed to extract a confession (Art. 126 Penal Code), in violation of Article 4 of the Convention Against Torture. Victims are thereby prevented from seeking justice. Under Article 63 of the Criminal Procedures Code only the prosecutor general has the right to raise a case against a public servant.

Death Penalty

The death penalty is still applied in Egypt. The numerous crimes punishable by death includes offences under the so-called "anti-terrorism" legislation, premeditated murder, rape and drug related offences. Over the past decade, death sentences have been pronounced for all these offences.

Of major concern is that acts of terrorism, which carry the death penalty and may be tried in Emergency State Security or military courts, are broadly and vaguely defined under article 86 bis of the Penal Code. As a result individuals are judged for loosely defined crimes in tribunals which lack the basic guarantees of a fair trial on charges for which they may pay with their life.

Recommendations:

The FIDH calls upon the Commission on Human Rights to condemn the human rights violations committed in Egypt, urging in particular the Egyptian authorities to:

- adopt a specific law on refugees rights in compliance with the Geneva Convention Relating to the Status of Refugees, ratified by Egypt in 1981;

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- take measures to permit the fully democratic expression of political pluralism;
- amend laws which strongly limit the freedoms of expression, opinion and association;
- lift the State of Emergency and the legislation adopted pursuant to this declaration;
- abolish the use of exceptional jurisdictions and ensure the independence of the judiciary;
- act in conformity with the Universal Declaration of Human Rights, the international human rights instruments ratified by Egypt and, in particular, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Egypt in 1986;
- invite the Special Rapporteur on Torture;
- adopt a moratorium on executions and to ratify the second optional protocol to the ICCPR, with the objective to abolish the capital punishment.

Nord Ouganda/Northern Uganda

The year 2006 marks the 20th anniversary of the conflict in northern Uganda. Over 1.7 million people are currently confined to internally displaced persons camps.¹ Over the course of the conflict, an estimated 25,000 children have been abducted by the Lord's Resistance Army (LRA) and these children make up an estimated 85% of the LRA.² Sexual slavery, gender based violence and abductions continue regularly. Up to 30,000 children are forced to flee their homes to commute nightly to sleep in centres of towns to avoid abduction.³ The government's response to the crisis, requiring that the majority of civilians live in congested and poorly protected camps, has exacerbated a humanitarian crisis that claims up to 1,000 lives per week.⁴

The Government of Uganda's preference for a military solution to the problem has weakened any attempt to resolve the conflict peacefully.

In October 2005, the International Criminal Court (ICC) unsealed arrest warrants for five LRA leaders. If these arrests were made it would certainly be a very significant step towards resolving the conflict. Yet with no means to implement warrants, the ICC has to rely on the Ugandan government, and in 20 years the Ugandan army has made little progress towards ending this war. Almost two weeks after the ICC unsealed its arrest warrants, in a spate of attacks on clearly marked humanitarian relief vehicles in northern Uganda and southern Sudan five staff members of international and local humanitarian organisations were killed. As a result of these attacks, humanitarian organisations imposed new security restrictions which have limited relief operations.⁵

The regional element of the conflict has recently been exacerbated due to the presence of the LRA in the Democratic Republic of the Congo (DRC) and southern Sudan. The LRA has perpetuated human rights abuses in all three countries; its presence has also threatened peace processes in both

southern Sudan and the DRC. As noted in UN Security Council 1653, governments in the region have a primary responsibility to protect their populations and ensure safe, unhindered access of humanitarian workers to people in need.

Grave violations of human rights and international humanitarian law in northern Uganda

The LRA continues to make the people of northern Uganda its main targets. The LRA is responsible for years of willful killings, beatings, large-scale abductions, forced recruitment of adults and children, sexual violence against girls whom it assigns as 'wives' or sex slaves to commanders, large-scale looting and destruction of civilian property. Its presence is one of the main factors of the displacement of nearly two million people in northern Uganda.⁷

These are gross violations of the rules of war applicable to the LRA, including the Geneva Conventions (article 3), Protocol Additional II to Geneva Conventions (articles 4 and 17) and customary international humanitarian law.

The government has mandated the Uganda Peoples' Defence Forces (UPDF) to provide security for the displaced population in northern Uganda, while the presence of police officers is rather minimal.⁸ However, the continuous attacks on IDPs prove that the display of UPDF soldiers is insufficient. The UPDF is itself a source of insecurity. The murder of civilians by the UPDF at Lalogi IDP camp in Gulu in December 2005 followed earlier killings in Bobi and Ongako IDP camps in September and October 2005.⁹ Although there are few instances where they have been brought to justice, quite often, abuses perpetuated by the UPDF remained unpunished and the camps lack mechanisms for any effective monitoring and reporting of any such violations. The UPDF also uses Local Defense Units (LDUs), who are often recruited from IDP population, as a means to protect camps. This is contrary to Principle 13 of the United Nations Guiding Principles on

1. Uganda Humanitarian Update, UNOCHA, December 2005.

2. UNICEF Humanitarian Situation Report, November 2005 & UNICEF Humanitarian Action: Uganda Donor Update, 28 September 2005.

3. UNICEF Humanitarian Situation Report, November 2005.

4. Government of Uganda Ministry of Health and World Health Organization Survey, "Health and Mortality Survey among internally displaced persons in Gulu, Kitgum and Pader districts, northern Uganda," July 2005.

5. "Abduction of children from northern Uganda," UN Doc E/CN.4/RES/2002/53, 23 April 2002.

6. "UGANDA-SUDAN: Another international NGO worker killed by LRA rebels," IRIN, 7 November 2005.

7. Human Rights Watch, *Uprooted and Forgotten, Impunity and Human Rights Abuses in Northern Uganda*, Human Rights Watch, 20 September 2005.

8. In northern Uganda, on average there is one police officer per 3,000 people (as opposed to the national average of 1 police officer per 1,700 people), Consolidated Appeal for Uganda 2006, UNOCHA, 30 November 2005.

9. UN OCHA Note on Lalogi Visit and Follow up Actions, UNOCHA, 28 December 2005. See also personal statement to Parliament of the Chairperson of the Legal and Parliamentary Affairs Committee "Oulanyah Raps Army," *New Vision*, 9 January 2006.

Internal Displacement and further violates the prohibition of recruitment of children, forced displacement, rape, torture and ill-treatment.

Violation of economic and social rights; a humanitarian emergency in northern Uganda

A humanitarian emergency exists in northern Uganda. Over 80% of civilians endure deplorable conditions in IDP camps where they have limited access to social services. Due to restricted movement, IDPs are not productive and thus unable to earn sufficient income to address health, nutritional and educational needs.

Right to Freedom of Movement: IDPs are limited or prevented from leaving camps and the socio-economic threats they face are increased by the restriction on their movement. Difficulties in accessing adequate health care, water, education, land and shelter are all exacerbated by restrictions placed on freedom of movement.

Right to Health: IDPs are also unable to exercise their right to adequate healthcare. A recent Ugandan Ministry of Health Survey found that the majority of deaths are attributed to chronic diseases and malnutrition associated with oral thrush. Most of the deaths occur outside health facilities.¹⁰

Right to Education: 60% of schools in northern Uganda have been displaced due to insecurity. Only 2% of children between the ages of three to five have access to early childhood opportunities.¹¹

Right to Water and Sanitation: Water deficits are the most serious in camps whose populations exceed 10,000, as the necessary water requirements surpass the production of available water sources.¹² Most families drink from unsafe water sources.¹³ A recent survey found that in the Kitgum and Pader Districts significant proportions of the population did not have any access to latrines.¹⁴

Recommendations

Recommendations to Government of Uganda

- We strongly urge the Government of Uganda to abide by the Guiding Principles on the Internal Displacement and to fully implement the Ugandan National Policy on IDPs. We further ask the Ugandan government, with the support from the international community, to provide the resources necessary to immediately and adequately respond to the humanitarian situation;
- We urge the Government of Uganda to ensure the full respect of its citizens in the conflict in the North by abiding to its international obligations, including the right to life and security of the IDPs, the right to freedom of movement, and to ensure that their basic needs are met;
- We call upon the Government of Uganda to ensure that the need for IDPs to fully participate in the upcoming and future elections is respected.

Recommendations to the UN Commission on Human Rights

Adopt a resolution which:

- Recognises the situation in northern Uganda as a crisis which has resulted in the inability of IDPs to exercise their fundamental human rights;
- Appoints a special rapporteur to focus on the human rights situation in northern and eastern Uganda and report back to the Commission with relevant findings, in accordance with ECOSOC Resolution 1235;
- Condemns the human rights violations perpetuated by the Lord's Resistance Army and urges that they, in accordance with UN Security Council Resolution 1653, engage in voluntary disarmament. The LRA should also immediately release all soldiers who are being held against their will;

10. Above No. 4.

11. UNICEF Humanitarian Situation Report, November 2005.

12. MoH and WHO Survey (above No. 4).

13. UNICEF (above No. 2).

14. International Rescue Committee, "Water and Latrine Coverage Survey-Uganda Programme" (2005).

- Calls on the Government of Uganda to ensure accountability of serious crimes committed by the UPDF by investigating and prosecuting as appropriate serious violations of international human rights and humanitarian law committed by UPDF where the military fails to do;

- Calls on the Government of Uganda to fulfill its responsibility to protect all of its civilians by, *inter alia*, prioritising protection of civilians and aid convoys by ensuring adequate deployment of security personnel and expresses its conviction that failure to provide adequate protection for civilians will require further action by the international community;

- With support from the international community, calls on the Government of Uganda to strengthen the presence of police officers and the judicial system within northern Uganda;

- Calls on the Government of Uganda to revamp its procedures for registering complaints regarding violations of human rights. Procedures for these complaints should be clear and disseminated in local languages throughout northern Uganda;

- In accordance with UN Security Council Resolution 1653, urge the international community to remain seized of the situation in northern Uganda and ensure that UN agencies and missions, including those within the region, namely the UN Mission in Sudan (UNMIS) and the UN Mission in the Democratic Republic of the Congo (MONUC) are adequately supported in their mandate to address the overall human rights and humanitarian situation caused by the presence of the LRA;

- Calls on the Government's of Uganda, Sudan, and the Democratic Republic of the Congo to fully cooperate with the International Criminal Court and ensure that the protection of wit-

nesses, especially formerly abducted children, is prioritised in any attempt to serve arrest warrants on the leaders indicted by the ICC;

- Calls on the various Special procedure mechanisms to continue to pay attention to the situation in northern Uganda.

Recommendations to the Office of the High Commissioner for Human Rights:

In light of the humanitarian emergency and following the mission of High Commissioner for Human Rights in January this year, we request that her offices support and facilitate further action to monitor the human rights situation in the North of Uganda.

Such actions include:

- Continuing to provide capacity-building support to the Ugandan Human Rights Commission and ensure its independence;

- Make the results of the investigations carried out by the OHCHR monitors publicly available promptly and periodically;

- Report results and findings of investigations to the UN Security Council and UN Secretary-General;

- Provide training and support to local human rights organisations, traditional leaders, and IDPs throughout Uganda;

- Urge the government of Uganda to act in accordance with relevant international law and the Guiding Principles on Internal Displacement, with special attention paid to freedom of movement.

République démocratique du Congo

La FIDH souhaite faire part de sa profonde préoccupation face à la persistance des graves violations des droits de l'Homme en République démocratique du Congo (RDC).

Sur les graves violations des droits de l'Homme et du droit international humanitaire commises en RDC

La FIDH condamne la persistance des violations des droits de l'Homme et du droit international humanitaire commises, en toute impunité, à l'est de la République démocratique du Congo, en particulier dans les provinces du Katanga, du Nord et du Sud-Kivu et dans le district de l'Ituri par des groupes armés, et notamment la pratique systématique de violences sexuelles à l'encontre des femmes. De même, elle déplore la persistance des actes de pillage, de l'exploitation illicite des ressources naturelles et la violation systématique de l'embargo sur les armes par les parties en présence.

Par ailleurs, la FIDH est vivement préoccupée par la situation des personnes déplacées dans la province du Katanga, au sud-est de la RDC. Depuis la mi-décembre 2005 et l'offensive du gouvernement pour désarmer les milices Mai-Mai opérant dans cette région, plus de 100 000 personnes ont dû fuir leurs villages et les attaques, viols et pillages se multiplient. Les combats de janvier 2006 entre forces gouvernementales et miliciens ont à nouveau entraîné d'importants déplacements de populations.

Nonobstant l'enquête ouverte par le Procureur de la Cour pénale internationale (CPI) sur les crimes internationaux commis sur l'ensemble du territoire de la RDC depuis le 1^{er} juillet 2002, la FIDH demande aux autorités congolaises de poursuivre et juger les auteurs de violations des droits de l'Homme et du droit international humanitaire commises en RDC conformément au principe de complémentarité inscrit dans le statut de la Cour. La FIDH invite également la RDC à coopérer pleinement avec la CPI, à adapter son droit interne aux dispositions du statut de Rome, et à signer et ratifier l'accord sur les privilèges et immunités de la Cour pénale internationale.

Par ailleurs, la FIDH, qui se félicite de la récente décision de la CPI reconnaissant à certaines victimes le droit de participer aux procédures devant la CPI dès le stade de l'enquête, appelle les autorités congolaises à coopérer avec la Cour pénale internationale pour garantir le cas échéant la sécurité

de tous les témoins et victimes qui pourraient être amenés à participer aux procédures devant la CPI.

Violations des droits des défenseurs des droits de l'Homme

La FIDH est vivement préoccupée par la détérioration de la situation des défenseurs des droits de l'Homme congolais et condamne l'assassinat de deux défenseurs, M. Pascal Kabungulu Kibembi, Secrétaire exécutif de l'ONG Héritiers de la Justice et membre de la Ligue des droits de l'Homme dans la région des Grands Lacs, et M. Polycarpe Mpoyi Ngongo, coordinateur du Réseau national d'observation des élections (RENOSEC) pour la région du Kasai oriental en août et novembre 2005.

Tout au long de l'année 2005, des défenseurs de droits de l'Homme et notamment des membres des organisations membres de la FIDH en RDC, le Groupe Lotus, l'ASADHO et la Ligue des Électeurs, ont été l'objet de menaces de mort notamment pour leurs déclarations sur la fin de la période de transition et le processus électoral. 43 cas de harcèlement et 26 arrestations ont été recensés par l'Observatoire pour la protection des défenseurs des droits de l'Homme, programme conjoint de la FIDH et de l'Organisation mondiale contre la torture (OMCT), pour l'année 2005.

La FIDH demande à la Commission des droits de l'Homme d'adopter une résolution sur la situation des droits de l'Homme en RDC :

1. condamnant les graves violations des droits de l'Homme et du droit international humanitaire commises en RDC,

2. renouvelant le mandat de l'Expert indépendant des Nations unies sur la situation des droits de l'Homme en RDC,

3. demandant aux autorités congolaises :

- de mettre un terme aux violations de droits de l'Homme commises en RDC et de poursuivre et juger leurs auteurs,

- de coopérer pleinement avec la Cour pénale internationale, et de faciliter l'arrestation et le transfert à la Cour des personnes poursuivies,

- d'adopter une loi d'adaptation du statut de Rome,

- de garantir le plein exercice des libertés d'expression et d'association,

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- de garantir en toutes circonstances l'intégrité physique et psychologique des défenseurs des droits de l'Homme, notamment la Déclaration sur les défenseurs des droits de l'Homme, adoptée par l'Assemblée générale des Nations unies le 9 décembre 1998,
- de faciliter la visite de la Représentante spéciale du Secrétaire général des Nations unies sur les défenseurs des droits de l'Homme en RDC, selon ses propres termes de référence, - de ratifier le Protocole à la Charte africaine des droits de l'Homme et des peuples portant création de la Cour africaine des droits de l'Homme et des peuples, et de faire la déclaration au titre de l'article 34.6 du Protocole permettant aux victimes et aux ONG de saisir directement la Cour africaine des droits de l'Homme et des peuples.
- de se conformer aux dispositions de la Déclaration universelle des droits de l'Homme et des instruments régionaux et internationaux relatifs aux droits de l'Homme liant la RDC et

Sudan

FIDH expresses its deepest concern at the ongoing perpetuation of grave human rights violations in Sudan.

With regard to the serious violations of human Rights and international humanitarian Law committed in Darfur

FIDH strongly condemns the continuation of gross violations of human rights and international humanitarian law committed in Darfur by the different parties to the conflict, especially the deadly attacks against civilians, the sexual violence against women, the ongoing clearing of population within the region, the targeted murder of members of the African Union troops and the abduction and murder of national and international humanitarian aid workers.

FIDH recalls that the conflict has led to the forced displacement of more than 2 million people. More than 3 million people, half of Darfur's population, consequently depend on international relief aid.

FIDH supports the conclusions of the second periodic report of the UN High Commissioner for Human Rights on the human rights situation in Sudan, published on January 11, 2006. This report calls on the Sudanese Government to halt attacks against civilians in Darfur and to disarm the Janjawid who are committing the worst atrocities. The degradation of the situation is such that on January 25, 2006, the UN Secretary-General Kofi Annan, stated "[...] *the transition from the A.U. force to a U.N. peace operation in Darfur is now inevitable.*"

FIDH recalls that the International Criminal Court (ICC) has jurisdiction over the crimes committed in Darfur since the UN Security Council referred the situation to the ICC on March 31, 2005. FIDH is concerned that the Special criminal Court on the events in Darfur established by the Sudanese authorities does not respond to the criteria of competence, independence and effectiveness and does not satisfy the requirements of complementarity to the ICC Statute.

With regard to the inhumane treatment of the internally displaced persons (IDPs)

FIDH is deeply alarmed by the policy conducted by the government to relocate the IDPs, who actually live in camps around Khartoum, following 20 years of civil war in the South of the country.

Since 2004, around 30,000 IDPs have been affected by this programme of relocation which is, according to the Sudanese government, intended to improve their conditions of living and to facilitate their return.

FIDH considers this programme is violating the provisions of the International Covenant on Economic, Social and Cultural Rights and the UN Guiding Principles on Internal Displacement as these displacements are carried out by force and without prior notice, in desertic areas lacking of basic amenities such as water, healthcare and education.

These evictions are therefore carried out under tensions, like in May 2005, when 14 persons, police officers and IDPs died.

With regard to the rights of human rights defenders

FIDH and OMCT, within the context of the Observatory for the protection of human rights defenders, welcomed the announcement of the rejection of the 2005 "Organisation of Humanitarian Voluntary Work Act", on February 13, 2006, by the Sudanese Parliament.

The Observatory nevertheless remains preoccupied by acts of harassment and threats against human rights defenders. Numerous legal harassment occurred against independent NGOs, notably against the Sudan organisation against torture (SOAT), FIDH member organisation. Several members of international and national NGOs were arbitrarily detained on the occasion of the 6th A.U. Assembly of Heads of State and Government held in Khartoum in January 2006.

Therefore, FIDH requests the Commission on Human Rights to:

1. Adopt a resolution under item 9 of its agenda:

- strongly condemning the gross violations of human rights and international humanitarian law committed in Darfur,
- asking for the establishment of a UN peace operation with a mandate of protection of civilians to complement the African Union force,

- renewing the mandate of the UN Special Rapporteur on the situation on human rights in Sudan,

2. Exhort all the parties to the conflict in Darfur:

- to conform to the ceasefire agreements and to engage in the peace negotiations

- to strictly respect international humanitarian law

3. Urging the Sudanese authorities:

- to abide by the UN Security Council resolutions 1556/2004, 1590/2005, 1591/2005, 1593/2005, 1627/2005, 1651/2005 and the recommendations of the report of the international commission of inquiry on Darfur published in February 2005,

- to abide by the decisions and declarations adopted by the A.U. Assembly of Heads of State and Government and by the A.U. Peace and Security Council on the situation in Darfur, notably decisions AU/Dec.54 (III) and Conf/AU/Dec.68 (IV) respectively adopted during the 3rd and 4th ordinary sessions of the Assembly of Heads of State and Government as well as the declarations PSC/PR/Comm. (XII) and PSC/PR/Comm. (XVII) respectively adopted by the A.U Peace and Security Council during its 13th and 17th sessions,

- to disarm the militias and to put an end to the attacks against civilians,

- to fight against the impunity of the perpetrators of the most serious crimes committed in Darfur by ratifying the Statute of the ICC, by bringing its domestic law in accordance with the Rome Statute and by fully cooperating with the ICC Prosecutor,

- to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and to make the declaration accepting the competence of the Court to receive cases lodged by NGOs and individuals (article 34.6 of the Protocol),

- to put in place a programme of relocation of IDPs in order to improve their conditions of life, in conformity with the International Covenant on Economic, Social and Cultural Rights,

- more generally to conform with the UN Guiding Principles on Internal Displacement,

- to conform with the provisions of the Declaration on Human Rights Defenders adopted in 1998,

- more generally to conform with all international and regional human rights instruments ratified by the Republic of Sudan.

Zimbabwe

FIDH expresses its deepest concern upon the grave human rights violations committed in Zimbabwe.

With regard to the human rights violations committed during "Operation Restore Order"

FIDH is deeply alarmed by the ongoing serious civil and political human rights violations, as well as of economic and social rights during the "Operation Restore Order" which began in May 2005. Under the pretext of cleaning up the large cities, the Government of Zimbabwe has led a massive campaign to destroy homes and to displace tens of thousands of street vendors. According to the United Nations, approximately 700,000 persons have lost their employment or their homes.

With regard to repressive legislation not in accordance with international human rights law

FIDH recalls that Zimbabwe has adopted numerous laws, which flagrantly violate fundamental liberties guaranteed in its Constitution and in international human rights conventions.

The Law on Access to Information and Protection of Privacy is used in order to censure and close down radio stations and press agencies. An amendment to this law would allow up to two years imprisonment for journalists who are not registered at the Media and Information Commission (MIC), a measure meant to control journalists. The "Criminal Law Codification and Reform Act" is also a cause of concern for journalists and human rights defenders due to its repressive provisions which can fine up to 20 years imprisonment any journalist who would pronounce or publish "false information deemed prejudicial against the State."

With regard to the Independence of the Judiciary

The independence of the judiciary is at stake in Zimbabwe. For instance, there are allegedly several high level magistrates who acquired land illegally during the "Fast track land resettlement program." These benefits accorded by Zimbabwean authorities are harmful to the independence of the Judiciary. This was further confirmed by a number of high level magistrates who publicly defended the adoption of the Constitutional Amendment No. 17 forbidding individuals who

were dispossessed of land to lodge any legal complaints despite the many complaints brought forward by human rights defenders denouncing the impunity of perpetrators of economic and social rights.

With regard to human rights defenders

FIDH strongly condemns the repression against human rights defenders in Zimbabwe. In 2005, several human rights defenders were threatened, were constantly placed under supervision by State security agents, were arbitrarily arrested, and were subject to physical violence and torture.

Moreover, FIDH remains concerned by a draft law which aims at restricting the activities of NGOs in Zimbabwe, and which targets specifically NGOs working on good governance or human rights. The draft law demands that NGOs register with the Ministry of Social Affairs, and provides for sanctions for those who do not register (including imprisonment). The draft law creates a Council for NGOs, composed of five members of civil society (whose independence is not guaranteed by law) and nine governmental members under the Ministry of Social Affairs. This Council would be responsible for registering NGOs, but also be able to investigate the administration, the management, and the activities of NGOs. The draft law allows the government to forbid NGOs from receiving funds from abroad, and to forward any funds received by NGOs to the donors or to simply take hold of such funds. This draft law on NGOs constitutes a serious deliberate attempt by the government of Zimbabwe to paralyse Human rights NGOs activities, and thus limiting any criticism of the government.

Therefore, the FIDH requests the Commission on Human Rights to adopt a resolution:

- 1. to condemn serious human rights violations committed by the government of Zimbabwe;**
- 2. to name a Special Rapporteur on the human rights situation of Zimbabwe,**
- 3. to call upon the governmental authorities to:**

- repeal or amend any constitutional or legislative provisions which are incompatible with the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights;

- not to enact the law on NGOs which would restrict their right of association, which is contrary to regional and international conventions on the protection of human rights;

- to respect the physical and moral integrity of human rights defenders and to immediately cease all threats and harassment towards them;

- to respect the United Nations Declaration of Human Rights Defenders adopted in 1998;

- to ratify the United Nations International Convention against Torture of 1984;

- to bring an end to impunity of perpetrators of human rights violations, by taking every measure possible to ensure the independence of the judiciary, by ratifying the Additional

Protocol of the African Charter on Human and Peoples' Rights which brings to the creation of the African Court on Human and Peoples' Rights, and making the Declaration under article 34.6 of the Protocol allowing NGOs and individuals to lodge complaints to the Court in case of violations of the African Charter by a State Party;

- to abide by the recommendations of the resolution of the African Commission on Human and Peoples' Rights on Zimbabwe adopted in December 2005 which condemns *"the violations and the deterioration of human rights in Zimbabwe, the lack of respect of the Rule of Law, and the development of a culture of impunity"*;

- to extend invitations to the Working Group on Arbitrary Detention, the Special Rapporteur on Torture, and the Special Representative of the Secretary-General on Human Rights Defenders.

Amériques/Americas

Colombia

Durante el 2005, la violación y amenaza de los derechos humanos en el territorio Colombiano, desafortunadamente no ha cesado. Los asesinatos, torturas, amenazas y desapariciones forzadas contra la sociedad civil son alarmantes, así como los ataques a los defensores de derechos humanos.

Los paramilitares en proceso de “paz” con el gobierno de Alvaro Uribe, continúan siendo los principales responsables de estas violaciones, al tiempo que el gobierno promovió y el Congreso adoptó la llamada “Ley de Justicia y Paz”, que no asegura el desmonte del paramilitarismo, ni la reparación de las víctimas, pero por el contrario asegura la impunidad de todos sus crímenes, pese a la condición prealable señalada por este de exigir que estos debían cesar sus crímenes.

De otra parte las guerrillas continúan cometiendo graves crímenes de guerra o infracciones graves al derecho internacional humanitario, como la práctica del secuestro y otros atentados contra la población civil.

Persistencia de la impunidad y política de paz

La FIDH comparte la preocupación del grupo de trabajo de las Naciones Unidas sobre las desapariciones forzadas por la promulgación de la Ley 975, del 25 de julio del 2005, denominada “Justicia y Paz” por parte del Gobierno Colombiano.

Lo que en teoría es una ley diseñada para alcanzar la paz en Colombia, es en realidad una ley de amnistía para los paramilitares, y desconoce la obligación que tiene el gobierno Colombiano de investigar, juzgar y sancionar a los autores de crímenes y graves violaciones a los derechos humanos.

En este sentido, la FIDH resalta la importancia de la decisión de la Corte Interamericana de Derechos Humanos (15 septiembre 2005) en la que se condena al Estado Colombiano en el caso de la masacre de Mapiripán. En esta decisión se reafirma la obligación del Estado de investigar adecuadamente y sancionar a los responsables de la masacre por lo que no podrán beneficiarse de la la ley de Justicia y Paz, y reitera su jurisprudencia según la cual “ninguna ley ni disposición de derecho interno puede impedir a un Estado cumplir con la obligación de investigar y sancionar a los responsables de violaciones de derechos humanos”.

Entre otros esta ley prevé que los paramilitares cumplan penas reducidas de 5 a 8 años, y no necesariamente en cárceles, por crímenes extremadamente graves como secuestro, matanzas, tortura y desapariciones, desconociendo de este modo el principio de justicia pilar de toda sociedad

Si bien aproximadamente 13,800 paramilitares han entregado las armas y se han reinsertado a la vida civil, continúan realizando ataques a la población civil, secuestros y desapariciones y la situación de las víctimas continúa siendo una incógnita; y sus derechos de verdad y reparación son desconocidos. La suerte de desaparecidos (más de 7,000) y secuestrados (500) no ha sido resuelta, ni es garantizada en la ley, igualmente no esta prevista la restitución de tierras a las poblaciones desplazadas.

Por otra parte el Decreto 4760 del 30 de diciembre de 2005 por el cual se reglamenta parcialmente la Ley 975 no establece un marco jurídico claro que garantice el respeto de los derechos de las víctimas de crímenes atroces cometidos por los paramilitares, a la verdad, a la justicia y a la reparación. Específicamente, el decreto no es claro en la aplicación de la ley con respecto a la entrega de los bienes adquiridos por testafierros para la reparación de las víctimas, y solo se refiere a bienes propiedad de las personas pertenecientes a los grupos armados. Este decreto continua a favorecer la impunidad y por ende los delitos atroces.

Los nexos entre la Fuerza Pública y los grupos paramilitares persisten y los paramilitares están infiltrados en diversas entidades estatales.

El Gobierno sigue insistiendo en una solución militar al conflicto, sin buscar soluciones pacíficas y la política de represión ha sido fortalecida con la “lucha contra el terrorismo”.

La FIDH y sus organizaciones miembro en Colombia insisten una vez más en la necesidad de llevar a cabo una verdadera política de paz que involucre todos los actores del conflicto; y en el cual se busque principalmente la libertad, la justicia y la reparación para las víctimas.

Situación de los defensores de derechos humanos

En el 2005 se continuó presentando una utilización selectiva de la violencia, se continuaron realizando amenazas, deten-

ciones arbitrarias, asesinatos y desapariciones forzadas de defensores de derechos humanos, sindicalistas, líderes sociales, dirigentes campesinos e indígenas.

Es importante señalar la masacre de la que fueron víctimas los integrantes de la comunidad de paz de San José de Apartado en Antioquia, la cual goza de medidas provisionales de la Corte Interamericana de Derechos Humanos y a la que la Corte Constitucional Colombiana pidió protección en marzo del 2004. A pesar de esto, fueron torturados y asesinados Luis Eduardo Guerra Guerra su esposa e hijo de 11 años; Alfonso Bolívar Tuberquia Graciano, su esposa y sus dos hijos de 6 y 2 años miembros de esta comunidad, quienes fueron detenidos por hombres uniformados que se identificaron como miembros de la brigada 11 del ejército Colombiano.

Igualmente

el 1ero de junio del 2005 Hernando Hernández Tapazco dirigente de la comunidad indígena Embera Chami y miembro del Departamento de Derechos Humanos de la Federación Nacional Sindical Agropecuaria (Fensuagro - Cut) fue detenido y acusado de rebelión, y se encuentra todavía en prisión en la ciudad de Manizales.

Estos ejemplos muestran como la situación de los defensores de derechos humanos está lejos de mejorar, y como las fuerzas armadas y la justicia Colombiana en algunos casos tienen una actitud neutra o complaciente frente a esta situación.

Derechos económicos, sociales y culturales y comunidades vulnerables

La FIDH lamenta que las políticas sociales no estén dirigidas a la redistribución de la riqueza y está muy preocupada por la progresión de los índices de inequidad que incluye a Colombia en los 3 países más inequitativos de Latinoamérica.

Las comunidades campesinas siguen siendo muy vulnerables. El 9 y 10 de octubre de 2005, en la comunidad de Jiguamiandó (Chocó), soldados de la brigada XVII hurtaron más de 50 cabezas de ganado pertenecientes a los pobladores de las zonas humanitarias de Bella Flor Remacho y Nueva Esperanza, les amenazaron y detuvieron arbitrariamente a unos miembros de la comunidad. Durante el primer semestre de 2005, al menos 153,463 personas fueron desplazadas forzosamente, o sea un 15% más que en el mismo periodo del año pasado y el Gobierno no ha cumplido la sentencia de la Corte Constitucional para afrontar esta crisis.

Es preciso señalar el desalojo violento de comunidades indígenas paeces en el municipio de Caloto, departamento del Cauca, por parte de las autoridades en el que las fuerzas armadas utilizaron armas de guerra, mientras los indígenas se defendieron con piedras e instrumentos de trabajo.

El desalojo se produjo el 9 de septiembre del 2005, después que los indígenas paeces habían efectuado una ocupación pacífica de las haciendas "La Emperatriz" y "El Guayabal" para presionar al gobierno a cumplir numerosos acuerdos, en particular la titulación de predios (15,663 hectáreas) que el Estado se había comprometido a otorgar a la familia de los indígenas asesinados tras la masacre de la hacienda "El Nilo" en 1991. Compromiso que el Gobierno no ha cumplido a cabalidad.

Teniendo en cuenta estos hechos, la FIDH y sus organizaciones miembros en Colombia urgen a la Comisión de Derechos Humanos de Naciones Unidas a adoptar una Resolución sobre la situación de los Derechos Humanos en Colombia en la que:

- Se exija al gobierno de Colombia levantar la reserva del artículo 124 del Estatuto de Roma, para que todos los crímenes de guerra que cometen todos los grupos armados en Colombia puedan ser investigados y juzgados en la CPI;

- Se inste al Fiscal General de la Corte Penal Internacional a abrir una investigación sobre Colombia, teniendo en cuenta las diferentes comunicaciones que ya reposan en su oficina, incluyendo una presentada por la FIDH;

- Se reclame del gobierno colombiano el reconocimiento claro de la labor legítima de los defensores de derechos humanos y del deber de todas las autoridades en todos los niveles de protegerles y de apoyar su labor;

- Se cumplan todas las recomendaciones de la Oficina del Alto Comisionado por los Derechos Humanos en Colombia y que se renueve el acuerdo con la Alta Comisionada para los Derechos Humanos para que su Oficina en Colombia continúe desarrollando plenamente su mandato;

- Se revise la política de seguridad democrática a la luz de las obligaciones internacionales en materia de derechos humanos y de derecho internacional humanitario;

- Se solicite al Grupo de Trabajo sobre detenciones arbitrarias

que considere la posibilidad de realizar una visita a Colombia para investigar, entre otras, las detenciones que sucedieron tras la implementación de la política de lucha contra el terrorismo;

- Se tomen acciones concretas para investigar, juzgar y sancionar los crímenes cometidos y para que se respeten los

derechos de las víctimas;

- Se exhorte a todas las partes del conflicto a que respeten el derecho internacional humanitario y en particular a cesar todo ataque en que pueda afectarse la población civil y a abstenerse de cualquier otra forma de agresión contra la población civil.

* * *

Cuba

En 2005, la situation des droits de l'Homme à Cuba ne semble guère avoir évolué. La FIDH rappelle à ce propos que la République de Cuba n'a toujours pas ratifié les principaux instruments internationaux de protection des droits de l'Homme, tels que le Pacte international relatif aux droits civils et politiques, le Pacte international relatif aux droits économiques, sociaux et culturels, ni la Convention interaméricaine des droits de l'Homme.

Défenseurs des droits de l'Homme¹

Le 26 février 2005, M. Oscar Elias Biscet, fondateur et président de la Fondation Lawton, organisation indépendante de défense des droits de l'Homme, a été condamné à trois ans de prison pour avoir agité un drapeau cubain vers le bas en signe de protestation et, suite à son refus de porter l'uniforme pénitencier, il lui est interdit de recevoir les traitements que nécessite son état de santé.

M. Juan Carlos Gonzalés Leiva, président de la Fondation cubaine des droits de l'Homme, assigné à résidence depuis le 26 avril 2004, a été victime de nombreux actes de répression depuis le 6 août 2005 : il est constamment surveillé et menacé par les services de sécurité de l'État et il a été à plusieurs reprises insulté et violenté par des groupes de civils, militaires et paramilitaires. Mme Martha Beatriz Roque, membre de l'Assemblée pour la promotion de la société civile est elle aussi victime d'un harcèlement constant de la part des forces de sécurité, des civils, des militaires et paramilitaires qui lui crient des consignes gouvernementales et l'insultent.

Les frères MM. Antonio et Enrique Garcia Morejón, membres du Mouvement chrétien de libération et promoteurs du Projet Valera (projet de 2002 qui demande la tenue d'un référendum au sujet de la liberté d'expression et d'association, la libération de tous les prisonniers politiques, la modification de la loi électorale et la possibilité de créer des entreprises), condamnés à des peines de prison puis libérés en mars 2005, ont été convoqués et menacés à plusieurs reprises par l'Unité de la police nationale révolutionnaire de la municipalité de Vertientes, Camagüey, qui a ouvert une enquête à leur encontre, les menaçant de les accuser d'être un "danger social", et depuis le 13 décembre 2005, M. Enrique Garcia Morejón

est détenu dans la municipalité de Vernientes au motif qu'il représente un "danger social avant même d'avoir commis un délit".

Ces personnes ont été détenues pour avoir exercé leur droit à la liberté d'opinion et d'expression ainsi que leur liberté de réunion et d'association protégées au titre des articles 18, 19 et 20 de la Déclaration universelle des droits de l'Homme. En effet, les personnes détenues sont des journalistes, des défenseurs des droits de l'Homme, des dissidents politiques ou syndicalistes.

Détentions arbitraires et conditions de détention

Les arrestations fondées sur l'exercice de la liberté d'opinion et d'expression sont toujours de rigueur. Lorsqu'il n'existe pas d'accusations concrètes à l'encontre des personnes arrêtées arbitrairement, des délits communs sont évoqués, comme cela été le cas pour M. Carlos Brizuela, membre du collège des journalistes indépendants de Camargüey, qui risque la prison, faute de n'avoir cessé ses activités de journaliste indépendant.

De plus, les accusations telles que celle portée à l'encontre de M. Enrique Garcia Morejón qui est détenu depuis le 13 décembre 2005 au motif qu'il représente un "danger social avant même d'avoir commis un délit" (d'après le Mandat d'arrêt du 13 décembre 2005 émis par le tribunal de la municipalité de Vertientes, Camagüey) illustrent parfaitement le caractère arbitraire de leur détention.

La FIDH rappelle que la détention arbitraire est interdite au titre de l'article 9 de la Déclaration universelle des droits de l'Homme et que cette interdiction a acquis une valeur de *jus cogens*, ce qui lie la République de Cuba bien qu'elle ne soit toujours pas partie aux principaux traités et conventions de protection des droits de l'Homme.

Les conditions de détention ne respectent pas non plus les standards internationaux. À titre d'exemple, M. Oscar Elias Biscet, défenseur des droits de l'Homme qui souffre d'hypertension, de gastrite chronique et d'hypercholestérolémie, a vu son état de santé s'aggraver depuis la date de son incarcération car les soins qui lui sont nécessaires lui sont refusés. Le droit des détenus à la communication avec l'extérieur est largement restreint, en particulier pour les prisonniers poli-

1. Les cas des défenseurs de droits de l'Homme cités ont été dénoncés par l'Observatoire pour la protection des défenseurs des droits de l'Homme, qui est un programme conjoint de la FIDH et de l'OMCT.

tiques à qui il n'est peu ou pas permis de communiquer avec leurs proches et dont l'accès à l'information (y compris à des ouvrages censés ne contenir aucune connotation politique) est très limité.

Enfin, Cuba figure toujours parmi les États appliquant la peine de mort, ce que la FIDH déplore.

Pour toutes ces raisons, la FIDH demande à la Commission des droits de l'Homme des Nations unies d'adopter une résolution dans laquelle elle renouvelle le mandat de la Représentante personnelle de la Haut-Commissaire aux droits de l'Homme sur la situation des droits de l'Homme à Cuba, et en particulier, *inter alia* :

- Exprime sa grave préoccupation à l'égard de la situation des droits de l'Homme à Cuba,
- Exige la libération immédiate et inconditionnelle des prison-

niers politiques et de toutes les personnes faisant l'objet de détention arbitraire,

- Exige que la législation soit modifiée de façon à garantir la liberté d'expression et d'opinion, ainsi que les droits à la liberté d'association et de réunion et en particulier qu'il soit dérogé à la Loi 88,

- Incite le Gouvernement cubain à ratifier les principaux instruments internationaux protecteurs des droits de l'Homme et notamment les Pactes de 1966,

- Exhorte le Gouvernement cubain à abolir la peine de mort,

- Exhorte le Gouvernement cubain à coopérer pleinement avec la représentante personnelle de la Haut-Commissaire aux droits de l'Homme, en l'invitant à se rendre à Cuba, afin d'entrer en dialogue avec les autorités pour trouver une issue à ces violations.

États-Unis d'Amérique/United States of America

The FIDH and its affiliate organization, the Center for Constitutional Rights (CCR), express their deep concern at the continuing and systematic human rights violations being committed by the United States (US).

I. Arbitrary Detentions, Torture and Cruel, Inhuman and Degrading Treatment

More than four years after September 11, 2001, the U.S. continues to detain nearly 500 men at Guantánamo Bay, Cuba without having properly determined their legal status under the Geneva Conventions or domestic U.S. law. The U.S. Government has continued to argue that the detainees have no rights, domestic or international, to be enforced.

Since gaining control of detainees, the U.S. military has held them at Guantánamo under conditions that violate their constitutional and international rights to dignity and freedom from torture and from cruel, inhuman and degrading treatment or punishment. Indeed, many of these violations—including isolation for up to 30 days, round-the-clock interrogations, extreme and prolonged stress positions, sleep deprivation, sensory assaults, removal of clothing, hooding, and the use of dogs—were actually interrogation techniques approved for use at Guantánamo by the most senior Department of Defense lawyer. It has also been proven that these techniques have been applied in other U.S. detention facilities in Iraq and Afghanistan.

In December 2005, President Bush threatened to veto a bill passed by the United States Senate intended to ban cruel, inhuman or degrading treatment of prisoners held by the military, saying it would bind the President's hands in wartime. The Bush Administration continues to block a true investigation of the abuse, torture and murder of people held by the U.S. at Guantánamo, Abu Ghraib, and other detention camps around the world.

II. Denial of and Interference with Access to Counsel

The U.S. military has continually interfered with the Guantánamo detainees' right to a confidential attorney-client relationship. Despite an October 2004 court ruling that the monitoring was impermissible, detainees' reports reveal that the Government continues informal monitoring of such communications.

The military imposes very harsh restrictions on detainees' communication with their lawyers. The military also punishes detainees for receiving attorney visits by placing them in solitary confinement for several days each before and after these visits.

III. Violations of the right to *habeas corpus*

On December 30, 2005, President Bush signed the Detainee Treatment Act into law. The Act strips federal district courts of habeas corpus jurisdiction disabling them from hearing cases arising from the detention of non-citizens at Guantánamo. The Government, claiming that the Act applies retroactively, now refuses to permit any attorney with a recently filed *habeas* case (which constitute the cases brought on behalf of 300 detainees) to visit his clients. Furthermore, until the Appellate Court or Supreme Court has decided the issue of retroactive application, the district courts refuse to entertain any application on behalf of any Guantanamo detainee, effectively freezing the litigation as it stands, and leaving detainees with no recourse whatsoever to the courts.

IV. Transfers to Countries Where Detainees Are Likely to Suffer Torture and Other Cruel, Inhuman or Degrading Treatment

The Government's practice of "rendering" persons under its control to countries and secret detention facilities where it is aware torture occurs, in violation of the U.N. Convention Against Torture, continues to this day. Recently, more light has been shed on the U.S. practice the "extraordinary rendition" of individuals to countries and under circumstances in which the Government must know that detainees will be tortured, or at least that they will likely be held without charges and interrogated under torture. Some of these prisoners have then ended up at Guantánamo. It is not publicly known how many people the Government has rendered to indefinite detention and torture, although estimates range from 150 to many thousands.

According to the Government, more than 275 detainees once held at Guantánamo have been transferred to other countries, including Egypt, Saudi Arabia, Iran, Yemen, and Tajikistan. As pressure to close the facility mounts, the use of illegal transfers from Guantánamo seems likely to increase. In August 2005, the U.S. announced that it had commenced negotiating agreements for the transfer of Guantánamo detainees to ten Muslim countries. One Yemeni national, Walid al-Qadasi, was

returned to Yemen from Guantánamo in April 2004. Almost two years later he is still being held in the Political Security Prison at Sana'a without charge. The head of the Prison reported that he and other Yemeni prisoners were being held at the behest of the U.S. Government.

The Government also claims to get "diplomatic assurances" from the foreign government that the detainees will not be tortured—but they are unenforceable, not monitored and not open to public scrutiny. Potential transferees cannot challenge the credibility or reliability of these assurances before an independent judicial body, and there is no requirement for the Government to take the past human rights history of the receiving country into account.

V. Hunger Strikes at Guantánamo

The Guantánamo detainees have been engaged in a number of widespread and often life-threatening hunger strikes to demand for respect of their religion, fair trials, proper legal representation and humane treatment. At least 50 individuals were being force-fed through nasal-gastric tubes in June-July and others still are. The U.S. military's ability to effectively end the strike without subjecting the detainees to further harm or indignity is in serious doubt.

Lawyers who went to see the detainees were denied access to their clients who had been hospitalized and could not assess the health status of their clients. They have also stated that the medical personnel are contributing to detainees' physical and mental anguish through medical mistreatment. Several detainees are now at death's door, with little that the lawyers can do.

VI. Violation of the Guantánamo Detainees' Right to Religious Freedom

Detainees, former detainees, and government officials have reported numerous incidences in which military personnel have kicked, thrown, or stomped on holy books; hosed them with water; written obscenities in them, or simply disallowed detainees from having them. Detainees complain that military personnel regularly desecrate the prayer time. For the past two years, the Government has denied the detainees an Imam altogether.

A memo issued by Defense Secretary Donald Rumsfeld on April 16, 2003 permits interrogators to employ the "Futility"

technique, according to which female military interrogators may "*perform acts designed to take advantage of their gender in relation to Muslim males,*" that is to degrade the moral infrastructure of Islam.

Government-initiated investigative reports regarding detention operations confirm that religious discrimination at Guantánamo is not considered "abuse." They also reveal that the Government fails to punish military personnel who violate the detainees' right to religious freedom.

VII. Warrantless and Illegal Surveillance of Communications

For over four years the National Security Agency (NSA), with the approval of the U.S. President, has engaged in a program of widespread warrantless electronic surveillance of telephone calls and emails in violation of the Foreign Intelligence Surveillance Act (FISA). FISA is a clear criminal law that authorizes foreign intelligence electronic surveillance only upon orders issued by federal judges. It expressly authorizes warrantless wiretapping only for the first fifteen days of a war, and makes it a crime to engage in wiretapping without specific statutory authority. Rather than seeking to amend this statute, President Bush simply violated it by authorizing warrantless wiretapping of Americans without statutory authority or court approval in the name of the "war on terror."

VIII. Conclusion and Recommendations

The right of every person to be free from mistreatment applies equally during peacetime and wartime, regardless of an individual's legal status. In failing to abide by these fundamental principles with regard to persons under its control, the U.S. is causing irreparable harm to the individuals detained, and has by now established dangerous precedents for other States to follow.

The FIDH and CCR therefore call upon the UN Commission on Human Rights to condemn the unlawful acts of enforced disappearance, arbitrary and indefinite detention, torture, and other cruel, inhuman and degrading treatment and violations of public freedoms, and call upon the US authorities to :

1. Respect its international obligations when they seek to temporarily override or restrict fundamental rights with the aim of combating terrorism;

2. Cease sending persons under its control to third countries where they may be at risk of torture or cruel, inhuman or degrading treatment;
3. Give individuals facing transfer a real opportunity to contest the transfer, including access to counsel and an independent hearing;
4. Ensure honest, confidential, and prompt communication between detainees held by the United States in the context of the “war on terror” and their counsel;
5. Refrain from exploiting detainees’ Islamic faith or practice in order to torture or otherwise persecute them;
6. Notify consulate, families, and attorneys of prisoners participating in hunger strikes and ensure that appropriate, medical attention is provided to them with their consent by an independent medical team;
7. Ensure that counter-terrorism laws and their methods of application, comply completely with international human rights standards.

Guatemala

En 2005, le climat de violence perdure au Guatemala. Les assassinats de femmes y sont extrêmement nombreux, les défenseurs des droits de l'Homme et les journalistes sont la cible d'attaques et de menaces croissantes. La justice reste en général silencieuse face à ces exactions commises, entre autres, par les forces de sécurité de l'État. Le mot d'ordre semble à présent être celui de la répression, dans un État où les inégalités sont énormes, et où l'extrême pauvreté des paysans et des indigènes est croissante.

Défenseurs des droits de l'Homme¹

Le 14 mars 2005, M. Juan Lopez Velasquez, membre du Comité d'unité paysanne, a été assassiné au cours d'une manifestation réprimée par la police nationale civile.

M. Harold Rafael Perez Gallardo, avocat du bureau juridique de l'ONG Casa Alianza Guatemala qui travaillait sur des affaires portées devant les tribunaux concernant les droits de l'enfant et notamment la traite, les assassinats, et les adoptions illégales, a été assassiné le 2 septembre 2005.

M. Leonel Meza Reyes qui a suivi la plainte de Rigoberta Menchu pour discrimination, a été attaqué par des inconnus en août 2005.

M. Leonel Garcia Acuña, secrétaire général du syndicat des travailleurs de la municipalité de San Miguel de Pochuta créé en décembre 2004, fait l'objet de menaces de mort et a été licencié.

Mme Vasquez, maire indigène de Solola et militante contre l'exploitation minière de la région a, quant à elle, reçu tout au long de l'année 2005 des menaces de mort et des insultes, entre autres de la part du gouverneur de Solola. Elle fait également l'objet d'un mandat d'arrêt, dans une région où la répression des manifestations indigènes est extrêmement violente.

La Coordination nationale des Organisations paysannes (CNOG) ainsi que HIJOS Guatemala ont été victimes, en plus du harcèlement de leurs membres, d'intrusions dans leurs locaux et de vols d'ordinateurs et de documents. Le plus souvent, aucune suite n'est apportée aux plaintes déposées.

Comme le montre le rapport annuel de l'Observatoire pour la protection des défenseurs des droits de l'Homme de 2005, les exactions commises à l'encontre des défenseurs des droits de l'Homme restent très nombreuses. Ces quelques exemples illustrent la gravité de la situation et l'inertie de la justice guatémaltèque. D'après nos informations, il semblerait que la police nationale, certaines autorités locales et nationales soient impliquées dans plusieurs de ces actes.

L'impunité toujours de rigueur

Le 31 août 2004, lors d'une réunion pacifique des dirigeants d'un mouvement paysan avec le procureur local, la police a procédé à l'expulsion forcée des paysans, faisant neuf morts. Appuyée par l'armée, la police a également brûlé les habitations des paysans ainsi que tous leurs biens, a détruit leurs cultures et tué leurs animaux domestiques. Six journalistes qui avaient filmé et photographié les événements ont ensuite été attaqués et leur matériel détruit. Plus d'un an après, aucune sanction pénale n'a été prise à l'encontre des auteurs et la dénonciation de ces crimes n'a donné lieu à aucune conséquence politique.

La FIDH se félicite du travail réalisé par le Bureau du Haut-Commissaire aux droits de l'Homme du Guatemala et soutient son mandat d'assistance technique et d'observateur de la situation, de même que celui de la *Procuraduría* des droits de l'Homme.

En revanche, la FIDH réitère son regret à la suite de l'abandon du projet de création d'une Commission d'enquête sur les groupes illégaux et les appareils clandestins de sécurité (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad - CICIACS). Cet organe paraît essentiel à la lutte contre le crime organisé dont sont complices nombre d'acteurs étatiques.

En dépit des efforts réalisés, les auteurs des exactions commises sont rarement poursuivis et les rares fois où ils sont condamnés, ils réussissent à s'échapper. La plupart du temps, le dépôt de plainte pour violence contre les défenseurs n'arrive même pas à l'identification des coupables.

L'attribution de gardes du corps et de voitures blindées aux défenseurs des droits de l'Homme et aux acteurs de la justice menacés, est largement insuffisante.

1. Les cas des défenseurs de droits de l'Homme cités ont été dénoncés par l'Observatoire pour la protection des défenseurs des droits de l'Homme, qui est un programme conjoint de la FIDH et de l'OMCT.

Les lois de sécurité adoptées n'ont, en réalité, que restreint davantage les libertés individuelles tout en assurant, de fait, l'impunité pour les crimes du passé, pour ceux par des membres de l'armée, de même que pour les actes de corruption dans lesquels ils sont impliqués. L'armée, enfin, s'est vue de nouveau confier des tâches de sécurité interne, ce qui est contraire aux accords de paix de 1996. De plus, le Guatemala n'a, à ce jour, pas ratifié le statut de la Cour pénale internationale.

La situation du droit à un procès équitable est tout aussi perturbante : les journaux ne respectent pas la présomption d'innocence et présentent à la une les accusés comme des coupables, participant au développement d'un sentiment d'insécurité favorable à la répression. Les tribunaux manquent d'interprètes, notamment pour les personnes parlant maya, et les preuves obtenues sous la torture sont prises en compte.

Peine de mort

Le Gouvernement a annoncé deux projets de loi relatifs à l'application de la peine de mort au Guatemala, en vue d'abolir la peine de mort et de clarifier le droit de grâce. Le président Oscar Berger s'est par ailleurs déclaré en faveur de l'abolition de la peine de mort lors de sa campagne électorale, en 2002, ainsi qu'à plusieurs occasions depuis. La FIDH se félicite de ces déclarations mais déplore qu'elles n'aient pas été suivies d'effet. Il faut ajouter à cela que le nombre de condamnés à mort présents dans les prisons guatémaltèques est difficile à déterminer, variant de 9 à 61 selon les témoignages officiels, ce qui témoigne de la déliquescence de l'administration des prisons.

Violations des droits économiques sociaux et culturels

56 % de la population vit dans la pauvreté, ce pourcentage atteignant 82 % dans les zones rurales. 24.3 % de la population indigène vit dans l'extrême pauvreté. La misère empêche la scolarisation des enfants qui sont obligés de travailler au lieu d'aller à l'école, réduisant d'autant l'impact des efforts du gouvernement en matière de droit à l'éducation.

La population souffre toujours de l'absence d'un système de santé efficace et de malnutrition, et le budget attribué à la santé est toujours insuffisant (en 2005, il était seulement de 0,3 %).

Les salaires restent misérables. La situation des femmes mayas est également une source de préoccupation en raison de la

triple discrimination pour leur tenue traditionnelle, leur langue et leur genre.

Le maintien du niveau de pauvreté semble perdurer en raison de l'impossibilité pour les communautés paysannes et indigènes d'accéder à la propriété. L'adoption d'un cadastre public pourrait constituer une mesure efficace de réduction de la pauvreté croissante. La loi sur le cadastre, adoptée par le Congrès le 15 juin 2005, ne reprend pourtant pas les amendements suggérés par la société civile en ce sens.

Bien que les effectifs de l'armée aient été réduits de 45 %, le budget affecté à ce poste est toujours le même que celui des années précédentes. Les militaires sont largement privilégiés dans les secteurs de la santé et de l'éducation.

Les négociations du traité de libre échange avec les États-Unis sont l'occasion de la répression violente des opposants à sa ratification : plusieurs manifestations pacifiques ont été réprimées violemment par la police nationale et l'armée, faisant plusieurs morts, des centaines de blessés et des intoxiqués en raison des gazs utilisés. Au titre des victimes figurent également des journalistes, de même que des membres de la *Procuraduría* de Derechos Humanos.

En raison de la gravité de la situation tant sur le plan des droits civils et politiques que sur celui des droits économiques et sociaux, la FIDH demande à la Commission des droits de l'Homme des Nations unies d'adopter une résolution sur le Guatemala dans laquelle elle appelle les autorités guatémaltèques à, *inter alia* :

- mettre en œuvre les recommandations du Bureau du Haut-Commissaire des droits de l'Homme au Guatemala,
- lutter contre l'impunité, améliorer le système de justice et le soutien aux défenseurs des droits de l'Homme et respecter les accords de paix de 1996,
- mettre en œuvre les recommandations de la *Procuraduría* des droits de l'Homme,
- mettre en place des CICIAS avec l'aide des Nations unies,
- engager une véritable réforme agraire qui protège le droit à la terre des communautés indigènes et assure le droit à l'alimentation de la totalité de la population.

La FIDH incite le Guatemala à procéder à l'abolition de la peine de mort, et la communauté internationale à soutenir financièrement et politiquement la *Procuraduría* des droits de l'Homme.

Haïti

La FIDH et son organisation partenaire, le Réseau national de défense des droits humains (RNDDH), expriment leurs plus vives préoccupations face à la situation des droits de l'Homme en Haïti.

L'année 2005 et le début de l'année 2006 ont été marquées par la recrudescence de graves violations des droits de l'Homme (exécution arbitraires, enlèvements, actes de torture, arrestations arbitraires, disparitions forcées) visant les populations civiles. Le gouvernement de transition, avec l'aide de la Mission des Nations unies pour la stabilisation en Haïti (MINUSTAH), n'a pas été en mesure de mettre fin à l'insécurité, à la corruption et aux violations des droits de l'Homme perpétrées par les bandes armées (chimères, anciens militaires et paramilitaires, Armée cannibale/Front de Résistance, gangs et groupes mafieux) et certains agents de l'État, notamment des membres opérationnels de la Police nationale d'Haïti (PNH). Si les élections législative, présidentielle et locale devraient permettre la mise en place de représentants légitimes, ceux-ci devront rapidement œuvrer afin de mettre fin aux graves et nombreuses violations des droits de l'Homme, lutter efficacement contre l'impunité des auteurs des violations des droits de l'Homme et permettre aux Haïtiens le plein exercice de leurs droits civils, politiques, sociaux et culturels.

Violation du droit à la vie

Les exécutions sommaires, assassinats ou tentatives d'assassinat se sont multipliés de façon inquiétante au cours de l'année 2005. Entre mars 2004 et novembre 2005, le RNDDH a recensé près de 1 500 assassinats dont 1 412 civils, 80 policiers et 5 Casques bleus.

Atteintes aux libertés individuelles et à l'intégrité physique

Les détentions arbitraires constituent la plus courante des atteintes aux libertés individuelles. Elles sont pratiquées par la PNH, mais aussi par l'ensemble des groupes armés et des gangs. En effet, les groupes armés et ceux qui se font passer pour autorités locales (CASEC, ASEC) possèdent leur propre cellule d'incarcération. Ainsi, d'avril à juillet 2005, le phénomène des kidnappings a pris une ampleur considérable : le RNDDH a dénombré pendant cette période entre 10 et 20 cas de kidnapping par jour. La situation depuis juillet 2005 semble plus fluctuante, avec certains mois des baisses significatives

(79 cas en janvier 2006) et d'autres mois des recrudescences inquiétantes (plus de 200 en décembre 2005).

La pratique abusive de la détention préventive et prolongée constitue un autre sujet de préoccupation majeure : en novembre 2005, 89 % des détenus étaient dans cette situation. Or, la pratique de la torture, l'extorsion de fonds voire les exécutions extrajudiciaires, se déroulent le plus souvent au cours des gardes à vue prolongées illégalement et des détentions arbitraires pratiquées par la police ou par les gangs.

Atteintes à la liberté de la presse, à la liberté d'expression

Les journalistes et les médias ont de nouveau été la cible d'attaques en 2005 après une relative accalmie en 2004. Ainsi 3 journalistes ont été tués entre mars 2004 et novembre 2005. L'assassinat, le 14 juillet 2005, du populaire journaliste du quotidien *Le Matin* et de la radio IBO, Jacques Roche, est venu confirmer les préoccupations exprimées par les organisations de défense des droits de l'Homme quant à la liberté de la presse et d'opinion en Haïti après l'assassinat d'Harold Brézault, du *Nouvelliste*, et la tentative d'assassinat contre le commentateur politique de Radio Méga Star, Raoul Saint Louis.

Les violences faites aux femmes

Malgré la ratification par Haïti de la Convention des Nations unies pour l'élimination de toute forme de discrimination envers les femmes et de la Convention de "Belém do para" qui oblige les États de l'OEA à prévenir et lutter contre les violences faites aux femmes, la situation des femmes en Haïti est très préoccupante. La recrudescence des viols s'avère particulièrement inquiétante à Port-au-Prince où de jour comme de nuit, dans tous les quartiers de la capitale, des femmes et des filles sont victimes d'agressions sexuelles. Les organisations de défense des droits de l'Homme ont recensé 221 cas de viol en 2005. Le kidnapping est largement associé au viol et les conséquences physiques et psychologiques de ces exactions sont d'autant plus terribles que le viol ne constitue toujours pas en tant que tel une infraction pénale dans le droit haïtien. Par ailleurs, en 2005, au moins 330 cas de violences contre les femmes ont été enregistrés, attestant de l'exactitude de l'équation "*plus d'armes = plus de violence envers les femmes*". En conséquence, le désarmement des groupes armés et de la population ainsi qu'un meilleur contrôle des armes auraient une incidence positive importante sur la situation des femmes en Haïti.

La justice et la lutte contre l'impunité

Les graves dysfonctionnements de la justice haïtienne favorisent et organisent l'impunité des auteurs de graves violations des droits de l'Homme. Ainsi, le 30 décembre 2005, la décision du juge Jean Pérez Paul de libérer par "main levée de mandat d'écrou" quatre des six présumés kidnappeurs incarcérés dans le cadre de ce dossier Nathaël Genelus, cet employé de la succursale de la UNIBANK de Damien porté disparu après avoir été arrêté par la police et conduit au sous-commissariat de police de Delmas 62, est l'illustration du détournement systématique des procédures pénales aux fins de soustraire à la justice les auteurs des graves violations des droits de l'Homme. De même, la libération de Louis Jodel Chamblain en août 2005, le projet de loi d'amnistie présenté en Conseil des ministres en septembre 2005 ou l'arrêté du 9 décembre 2005 qui met à la retraite forcée cinq juges de la Cour de Cassation, démontrent une justice aux ordres et le climat d'impunité qui règne en Haïti.

Recommandations

Face à cette situation, la FIDH et le Réseau national de défense des droits humains demandent à la Commission des droits de l'Homme d'adopter une résolution sur la situation

des droits de l'Homme en Haïti renouvelant le mandat de l'Expert indépendant et :

- Exprimant sa préoccupation quant à la détérioration de la situation des droits de l'Homme en Haïti ;

- Pressant le gouvernement et la MINUSTAH de prendre les mesures nécessaires afin de garantir le respect des droits de l'Homme, en conformité respectivement avec ses obligations internationales et son mandat, notamment en ce qui concerne le droit de ne pas être arrêté ou détenu arbitrairement, le droit de ne pas être soumis à la torture ou à des traitements cruels, inhumains ou dégradant, le droit de ne pas être privé arbitrairement de sa vie ;

- Pressant le gouvernement d'appliquer les recommandations formulées par l'Expert indépendant, notamment dans le domaine de la lutte contre l'impunité, et afin de poursuivre le programme de coopération technique engagé avec le Haut-Commissariat des droits de l'Homme puis continué au travers de la section droits de l'Homme de la MINUSTAH ;

- Priant le Haut-Commissariat des droits de l'Homme de poursuivre son programme de coopération technique avec le gouvernement au travers de la section droits de l'Homme de la MINUSTAH.

Asie/Asia

Iran

FIDH and LDDHI express their deep concern regarding the deterioration of the human rights situation in Iran.

Following the June 2005 election, the conservative Mr. Mahmoud Ahmadinejad has been elected as the President of the Islamic Republic of Iran. The election was carried out in clear violation of article 25 of the ICCPR, which enshrines the right to free and fair election. Before the election, the Council of Guardians, a non elected conservative body, rejected a huge number of candidates to the election, including many reformists and all the women.

Freedom of expression

The Iranian government intensified its attacks on human rights defenders.¹ Mr. Abdolfattah Soltani, lawyer and member of the Council of the Bar of Tehran and a founding member of the Defenders of Human Rights Centre (DRHC), was arrested on July 30, 2005. He has not been formally charged but a Judiciary spokesperson announced that he is accused of revealing Iran's nuclear secrets. His arrest might actually be linked to his role as a defense lawyer in the Kazemi case. On January 14, 2006 the Court granted Mr. Soltani's release on bail which was set at 800,000 euros. Mr. Nasser Zarafchan, a founding member of the DRHC, was arrested in August 2002 and he is still detained in spite of his precarious health conditions. He was sentenced to 5 years imprisonment because of his declarations about the regime's role in the murder of intellectuals in 1988.

Several journalists and web-loggers remain in prison. Mr. Akbar Ganji, journalist, is detained in the Evin prison in Tehran since 2000, on the charge of undermining national security and propaganda against institutions of the Islamic Republic. His health is very precarious, he weights 50 kg since his hunger strike in 2005 and he is currently detained in solitary confinement. Mr. Mojtaba Saminejad, a web-logger and student at the Tehran University, was sentenced to two-year imprisonment in June 2005 for insulting the Supreme Guide. One month later he was given an extra ten months in prison for incitement to immorality. Mr. Arash Sigarchi, journalist and blogger, was condemned to three years in prison for "insulting the Supreme Guide" and "propaganda against the

regime" in January 2006 and imprisoned a few days later. Suspended sentences are also often used to silence journalists.

The Iranian government pursued the harassment against trade unionists. Five of them have been sentenced to prison sentences on November 9, 2005: Mr. Mahmoud Salehi (5 years), Mr. Jalal Hosseini (3 years), Mr. Mohsen Hakimi (2 years), Mr. Borham Divangar (2 years) and Mr. Mohammed Abdipoor (2 years). They were charged with association with the banned political association Komala.

Mr. Mansour Osanloo, Chairperson of the public transportation union Sherkat Vahed, was arrested on 22 December 2005 for creating an "illegal union." 12 other leaders of the union were arrested in January 2006 for having announced a strike.

Several students are still in prison in connection with the protests of 1999. Among them Mehrdad Lohrasebi and Abbas Deldar have been condemned to 15 years in prison; Javid Tehrani, condemned to seven years in prison and freed four years later, was re-arrested in June 2004; and Peyman Piran (condemned to ten years in prison). Bina Darab-Zand, another student, was condemned in October 2004 to three years and a half in prison and is currently detained. In addition, the students organisation Tahkim Vahdat announced on December 23, 2005, that several of its leaders were condemned *in camera* to prison sentences in December 2005: Ali Afshari (6 years in prison), Akbar Atri (5 years), Abdollah Momeni (5 years), Ahmad Faraji (3 years), Amir Balali (1 year) and Farid Modaresi (8 months). Those persons are not currently detained.

The rights of minorities

Discrimination based on religion and ethnic origin remains common. Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities (art. 13 of the Iranian Constitution).

There are clear signs that the discrimination against the Baha'i community is on the rise. According to the Baha'i International Community (BIC), at least 59 Baha'is have been arrested, detained or imprisoned in 2005. Mr. Dhabihu'llah Mahrami, who spent 10 years in jail accused of spying for

1. See 2005 annual report of the Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and OMCT.

Israel, died in prison of unknown causes on December 15, 2005. Although Mr. Mahrami was formally accused of spying for Israel, court records indicate that he was tried and sentenced on the charge of being an apostate.

Iranian authorities reportedly continued to bar Baha'is from access to university despite a specific recommendation to put an end to that practice made by CERD in July 2003. The BIC reports that a large number of Baha'i students passed the national university entrance examination in July 2005. It was not necessary to declare a religious affiliation in order to take the exam. However, when they got their results, they saw that they had been falsely recorded as Muslims.

Kurds are barred from teaching the Kurdish language at schools and face restrictions in publishing Kurdish literature. Kurdish cities are among the least developed in the country with high levels of unemployment.

Following the killing of a Kurdish opposition activist by Iranian security forces in the city of Mahabad on July 9, 2005, demonstrations have erupted in the mainly Kurdish neighbouring towns. Five persons were killed by the security forces but other sources estimate that the number of civilians dead varies between 12 and 20 persons. The Iranian authorities did not carry out an independent enquiry in those events, in spite of the fact that the security forces clearly made an excessive use of force against unarmed civilian. Many demonstrators were arrested, including Kurdish human rights activists and journalists. Among them Mr. Mahmoud Salemi, arrested on August 4 for participating in demonstrations in Saqez; Mr. Borhan Divangar, a member of the Saqez Bakery Workers' Union; Ms. Roya Tolouï, a women's rights activist (released on bail on 5 October 2005); Mr. Azad Zamani, a member of the Association for the Defence of Children's Rights. Mr. Madeh Ahmadi, Mr. Ejalal Ghavami and Mr. Saïd Saedi, Kurdish journalists also arrested in July and August 2005, are reportedly still in prison. Mr. Mohammad-Sadigh Kaboudvand, Director of the weekly *Payamkurdistan*, was condemned to 18 months in prison in August 2005 for upsetting public opinion and spreading separatist ideas. On November 26, 2005, three Kurdish activists saw their condemnations confirmed by the Supreme Court: Reza Amini (20 years in prison), Hemat Azarpour and Abdollah Mohammadi (15 years).

In the region of Khusistan, tens of persons belonging to the Arab minority were arrested and condemned *in camera* over the last months of 2005 after protests asking for increased

autonomy (right to publish in Arabic, etc). Violent clashes opposed protesters to the police, resulting in a number of injured.

The death penalty

The Islamic Republic of Iran continues to apply the death penalty under conditions that blatantly violate international standards. No official statistics are available and independent sources of information are very fragmented. It is clear however that the number of condemnations to death and executions is on the rise over the past months. According to information collected from the Iranian press, LDDHI denounces 14 executions in December 2005, among which two women. According to Hands off Cain, 12 persons were executed in January 2006. In December 2005, two persons had their hand cut for robbery.

The Iranian law violates the ICCPR under which the death penalty must be restricted to the most serious crimes only. The Islamic penal law provides for the death penalty for crimes such as: adultery of a married woman with a man, heresy, homosexual acts, fornication of a non-Muslim with a Muslim woman, fornication with the wife of one's father.

Children under 18 year-old at the time of the offence are executed in violation of the Convention on the Rights of the Child. In 2005, several executions of child offenders were recorded. Mahmoud Asgari (16 years) and Ayaz Marhoni (18 years) were hung in Mashhad in July 2005. They were allegedly condemned to death for raping a 13 year-old child. A young Afghan (Rostam Tajik), who was minor at the time of the crime, was executed in December 2005.

FIDH and LDDHI urge the CHR to adopt a resolution on the Human Rights situation in Iran, appointing a Special Rapporteur on Iran and asking the authorities to:

- free immediately and unconditionally all prisoners of opinion;
- implement the recommendations of the UN human rights mechanisms and treaty bodies;
- put an end to discrimination against minorities;
- abolish corporal punishments;
- ensure that the death penalty is only carried out for the most serious crimes, never applied to juvenile offenders, nor carried out in public and adopt an immediate *moratorium* as a first step towards abolition;
- ratify CAT, CEDAW and the Statute of the ICC, without incompatible reservations;
- submit its periodic reports under the ICCPR and the ICESCR.

République populaire de Chine/People's Republic of China

The FIDH and its affiliate organization Human Rights in China (HRIC) express their deep concern at the continuing extensive and systematic human rights violations taking place in the People's Republic of China (PRC).

While there has been improvement in some areas, the human rights situation is generally deteriorating and remains serious for individuals and groups dealing with subjects the PRC considers politically sensitive. The tight control of information, including on individual cases, trends and statistics, limits constructing any effective means to address pervasive social problems, including the widespread use of torture documented by the Special Rapporteur on Torture, and increasing social protests.

I. Crackdowns on freedom of information and expression

In 2005, the PRC increased constraints on freedom of expression by increased control and crackdowns on civil society, media organs and the Internet. Restrictions are enacted by legal, technical and social tools, aimed at limiting news to information and stories approved by the PRC authorities. Job dismissals, shutting down publications, banning writers, blocking websites, and arrests, prosecutions and heavy sentences contribute to a climate of fear, censorship, and self-censorship.

a. Control of the Internet

The routine blocking of Internet sites that contain information on sensitive subjects, including democracy, human rights, Falun Gong and Tibet continued in 2005, and intensified before high-level government events and anniversaries. Restrictions on the Internet are made possible by state-of-the-art technical controls in place, including firewalls, proxy servers, ISP filtration software, local-level filtration software, e-mail filtration, surveillance and the cooperation of foreign information technology (IT) companies.

Web sites, including those of information providers and targeted NGOs continue to be blocked. Controls on individual blogs have also been tightened. On December 31, 2005, the blog of Beijing investigative blogger Anti was shut down without warning by its host, Microsoft. Individual email accounts are

also subject to surveillance and filtration, and IT companies agree to hand over personal account information to the authorities. This was seen in the case of journalist Shi Tao who was convicted in April 2005 to 10 years in prison for leaking state secrets through his Yahoo.cn account.

Internet cafés continue to be strictly controlled through new regulations passed in 2005 that require Internet operators to police their sites for content that can “endanger state security” and “social order.” Internet cafés continue to be closed for infractions, having a disproportionate access on the poor, rural inhabitants and migrants who can only access the Internet through these cafés.

b. Control of media outlets

In 2005, increasing numbers of magazines and newspapers were closed and editors and journalists dismissed due to the publication of articles on sensitive issues including political reform, protests and corruption.

In December 2005, *Beijing News* editor-in-chief Yang Bin was dismissed for publishing “unapproved material” on a crackdown on protesting peasants in northern China. Xia Yitao, deputy editor-in-chief of the *Southern Metropolis City News*, was also dismissed in December over a report about a vice governor receiving a demerit. Entire publications have also been shut down, including bimonthly journal *Strategy and Management*, closed by the State Press and Publication Administration after a controversial article on North Korea.

c. Impact on individuals

Detentions and charges of state secrets and state security crimes against individual journalists also continued in 2005. In April, Shi Tao, a former *Contemporary Business News* editor, was sentenced to 10 years in prison for providing state secrets to a foreign-based Web site. Ching Cheong, a Hong Kong, SAR resident and journalist for Singapore's *Straits Times* was detained in April and later arrested on charges of spying. *New York Times* researcher, Zhao Yan, detained in October 2004 and later charged with state secrets crimes, remained in detention awaiting trial throughout 2005.

Writers have also been banned or dismissed from their jobs. In March 2005, Jiao Guobiao, a journalism professor at Peking University was effectively dismissed after critiquing the Communist Party's propaganda machine.

II. Increasing inequality and rising social protests

The PRC Ministry of Public Security announced a recorded 87,000 cases of disturbances of public order in 2005 up 6.6 percent from the previous year.¹ Protests continue to be caused by illegal land grabs, local corruption, and industrial pollution. The gap between rich and poor also continued to widen, contributing to unrest and demands for social justice. As noted by the Committee on Economic, Social and Cultural Rights (CESCR) during their review of the PRC in 2005, despite rapid economic development in recent years, poverty still persists and disproportionately affects the rural population.

Social protests were met by harsher official reactions in 2005. Special heavily-armed "anti-terror" and riot police units were established in 26 major cities in August, including Beijing, Shanghai, Chongqing and Tianjin. In July 2005, protests arose after 1,500 Taishi villagers tried to oust a corrupt village head. Dozens of individuals were injured in violent clashes with more than 500 armed police. In early December, over 300 villagers clashed with police over land grabs in Dongzhou Village, Shanwei, in Guangdong province. At least 20 villagers were reported killed there by armed police.

III. Continued and widespread use of torture

Despite surveillance of the Special Rapporteur on Torture during his visit to China in 2005 and intimidation of individuals attempting to meet with him, his initial findings confirm that torture remains common practice in detention facilities throughout China.

HRIC, the FIDH and other NGOs continue to receive independent reports of abuse in detention centers, reeducation through labor (RTL) camps, prisons and elsewhere. Some cases of particular concern include:

- Hada, 49, a Mongolian rights activist currently at Chifeng prison in Inner Mongolia is regularly tortured, and suffers from physical and mental illness but is denied access to medical treatment.

- He Depu, 59, a veteran democracy activist is held at in Beijing No. 2 Prison, where he has suffered mistreatment and denial of medical treatment and assistance from his family.

- Li Jianfeng, 40, a labor activist, is held at the Fujian Provincial No. 2 Prison where he has suffered from mistreatment including by electrical shocks, sleep deprivation and denial of medical attention.

- Li Kuisheng, a former defense lawyer, is currently held at the Yingyang City Detention Center. Li has been beaten, kicked and forced to run in the snow during his detention, and was also deprived of sleep during a 14 day-long interrogation.

IV. Recommendations

The FIDH and HRIC call on the Commission on Human Rights to adopt a resolution on the PRC, urging the authorities to demonstrate:

1. Steps towards greater cooperation with international processes, including by:

- Ratifying the ICCPR as urged by the Special Rapporteur on Torture, and withdrawing the declaration as to article 8.1(a) of the ICESCR as recommended by the CESCR;

- Implementing recommendations from UN treaty bodies and special mechanisms, such as those of the Committee Against Torture (2000), the Committee on the Elimination of Racial Discrimination (2001), the UN Working Group on Arbitrary Detention (1997 and 2004), the Special Rapporteur on the right to Education (2003), the CESCR (2005), the Committee on the Rights of the Child (2005) and the Special Rapporteur on Torture (2005);

- Issue a standing invitation to all the UN special thematic procedures.

2. Fulfilling the right to freedom of expression and association, including by:

- Removing restrictions on information that can be published in print and online as steps towards establishing a free press;

- Removing the numerous and strict controls placed on accessing online content, including those on IT companies operating in the PRC;

1. PRC Ministry of Public Security Press Conference, "Press Release: 公安部召开新闻发布会通报2005年全国社会治安形势暨火灾形势 (Ministry of Public Security Report on the Trend of Social Order and Disaster in 2005)," January 20, 2006, <http://news.mps.gov.cn>

- Abolishing broad and vague definitions of state secrets and state security crimes disproportionately used to imprison journalists, lawyers and other dissenting voices.

3. Willingness to reach a peaceful solution on Tibet through dialogue with the Dalai Lama

4. Progress on Judicial and Administrative Reform and the elimination of the practice of torture, including by:

- Abolishing the practice of RTL and similar forms of detention;

- Immediately and unconditionally releasing all political prisoners, including those persons found to be arbitrarily detained by the UN Working Group on Arbitrary Detention;

- Reducing and limiting the number of crimes for which the death penalty can be applied as a first step towards a *moratorium*.

Territoires palestiniens occupés/Occupied Palestinian Territories

Al-Haq, the Palestinian Centre for Human rights (PCHR), and FIDH note with deep concern that the human rights situation in the Occupied Palestinian Territories (OPT) has remained grave in 2005. Much of the focus of the international community during the year was on Israel's unilateral withdrawal from the Gaza Strip and four small settlements in the northern West Bank (the "Disengagement Plan"). However, whilst the removal of settlers from these areas is significant, it should be noted that behind these well-publicised headlines, Israel remains in effective control of all of these areas and continues to be the Occupying Power over the West Bank, including East Jerusalem, and the Gaza Strip. Indeed, the number of settlers in the OPT is greater now than it was prior to the Disengagement. Further, many of Israel's policies, notably those of extrajudicial killings, movement restrictions, and the ongoing construction of the Annexation Wall, have continued at the same or an escalated level. This has laid bare the chasm between Israel's rhetoric and the reality on the ground.

Extrajudicial Killings

Israel's extrajudicial killing of Palestinian civilians has continued unabated. Such killings include the targeted assassination of "wanted" individuals as well as the killing of persons during arrest raids or military operations. Although Israeli officials stated in February 2005 that they would "cease all [their] military activity against all Palestinians everywhere," we have documented 30 targeted killings in the OPT in 2005. Further, there have been at least 12 cases in which individuals were killed when already in custody of Israeli forces. In total, there have been 218 killings of Palestinians, including 52 minors, in the OPT during the year. Such killings fly in the face of the fundamental right to life and other associated rights such as that to due process, as upheld in international human rights and humanitarian law. As a signatory to such legal standards as the International Covenant on Civil and Political Rights (ICCPR) and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Israel is in breach of the commitments it has made therein.

These killings take place against a backdrop of a series of policies that effectively result in impunity for the perpetrators. Investigations are typically meagre or nonexistent, as the Israeli military's judge advocate general's office only opens investigations in exceptional cases. The ability of Palestinians

affected by such killings to seek legal remedy was further curtailed in July 2005, when the Israeli parliament passed the amended Civil Wrongs (Liability of the State) Law (the Compensation Law), which proclaims that the State of Israel and its individual agents are "not civilly liable for an act done in the course of a war operation" of the Israeli military. Israel's ongoing killings of Palestinian civilians in the OPT, together with this culture of impunity, appear to have resulted in a de facto policy of tacit endorsement by the Israeli authorities of excessive, and often lethal, force, against Palestinians.

The Annexation Wall

Despite the resounding affirmation of the International Court of Justice (ICJ) over a year ago that Israel's construction of the Wall and its associated regime in the OPT is contrary to international law, Israeli authorities have continued the construction on Palestinian land in 2005, in particular in the vicinity of illegally-annexed Jerusalem. Over a third of the Wall has been built to date; once completed, nearly 80 percent of its 670 kilometres will be located in the OPT. It is evident that the route, despite the February 2005 modifications, continues to effectively annex substantive amounts of Palestinian land on the "Israeli" side, as it weaves around to include as many Israeli settlements as possible.

Palestinian, Israeli, and international human rights organisations have repeatedly warned the international community that the Wall's construction is not merely a breach of international human rights and humanitarian law, it represents an effort to unilaterally establish a border. Israel's protests on this point rang hollow in November 2005, when Israeli Minister of Justice Tzipi Livni stated,

One does not have to be a genius to see that the fence will have implications for the future border. This is not the reason for its establishment, but it could have political implications.

Israeli authorities have been quick to point out that Palestinians affected by the Wall may petition the Israeli High Court of Justice with their claims. However, the High Court, despite the clear position adopted by the ICJ, the International Committee of the Red Cross, and local and international human rights organisations alike regarding the illegality of the Wall's construction in the OPT, found such construction to be lawful. While some decisions of the High Court have resulted in shifts in the Wall's route, the underlying illegalities of its construction remain. As such, the claim that Palestinians can obtain

justice from Israel's highest judicial body appears to be empty rhetoric.

Movement Restrictions

At its essence, the Wall is a physical manifestation of Israel's longstanding policy of restricting the movement of Palestinians in the OPT. Movement restrictions have a wide-sweeping daily impact on hundreds of thousands of Palestinians throughout the OPT. They may take such forms as permanent or "flying" (mobile) checkpoints, roadblocks, dirt mounds, and road gates. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has noted that there were 376 movement restrictions in place as of August 2005. Israel has repeatedly claimed that the number of checkpoints in the OPT has been reduced. While it is true that some of the barriers have been dismantled, this reduction has been accompanied by an increase in the number of "flying" checkpoints; between 21 December 2006 and 3 January 2006, OCHA documented 184 "flying" checkpoints in the West Bank. Clearly, Israel's restriction mechanisms have changed while the policy has remained the same. These checkpoints, whether permanent or "flying," provide the background for regular humiliation of Palestinians crossing them.

Such constraints on the ability to travel freely restrict the ability to access work, education, healthcare, agricultural property, family, and other essential aspects of life. Physical barriers prevent Palestinians from travelling within the West Bank (in particular between East Jerusalem and the rest of the West Bank), as well as between the West Bank and Gaza Strip. Further, permanent checkpoints such as Qalandia and Bethlehem have become "terminals." When considered in light of the comment by Livni regarding the impact of the Wall, it appears that these terminals are intended to be nascent international border crossings despite the fact that they are clearly within the OPT.

Movement restrictions are linked to and upheld by a strict Israeli policy regarding permits. Palestinians who wish to travel between the West Bank and Gaza Strip, or between East Jerusalem and the rest of the West Bank, must obtain a special permit from the Israelis to do so. No clear and consistent procedures are available to determine which requirements must be met by those seeking these permits. Moreover, no such restrictions are placed on Israeli settlers, who may travel freely throughout the OPT even though settlement construction therein is a clear violation of international law.

Physical barriers and Israel's accompanying permit system have a grave impact on Palestinians' freedom of movement. This right is clearly protected under international law, in particular by Article 12 of the ICCPR, to which Israel is a State Party. Further, movement restrictions result in a series of associated breaches of other fundamental rights, such as those to health, work, education, and protection of the family.

International Obligations

Israeli authorities maintain that international human rights standards are not applicable to the current situation in the OPT, a position which has been firmly rejected by each treaty body as well as the ICJ. Thus, they must be held accountable for their violations in this area, violations which have over time been cumulative, exacerbating their impact. Further, the incumbent Palestinian National Authority must also adhere to certain fundamental tenets of international law.

As Al-Haq, PCHR and FIDH have emphasised to this body previously, international law does not stop at national borders. At a time when the practices and policies of Israeli authorities, such as the ongoing killing of Palestinian civilians and the continuing construction of the Wall, speak louder than their words, the international community must take action. Inaction will only ensure the further deterioration of the ongoing human rights and humanitarian crisis in the OPT.

We request that the Commission adopt a resolution:

- Ensuring that Israel implements its international legal obligations set forth in the Advisory Opinion of the ICJ, and calling on UN Member States to do same.
- Calling on the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to urgently conduct a mission to the OPT.
- Ensuring that Israel reports on its adherence to its obligations under international human rights treaties vis-à-vis the OPT in its periodic reports to UN treaty bodies.
- Expanding the mandate of the Office of the High Commissioner for Human Rights in the OPT to include human rights monitoring as well as training.

The Right to Self-Determination of Palestinians

The FIDH and PCHR note with deep concern that the right of Palestinians to exercise self-determination has continued to be denied in 2005. This was despite the much-heralded Israeli Disengagement Plan, which involved Israel's unilateral withdrawal of settlers from the Gaza Strip and four small settlements in the northern West Bank, in addition to the redeployment of Israeli Occupation Forces internally from the Gaza Strip.

Israel successfully presented the "mirage" of disengagement to the international community as the end of the occupation in the Gaza Strip. The reality, however, is that the occupation remains in its legal and physical form and Israel maintains "effective control" of the area. The Fourth Geneva Convention therefore still applies. In addition, by implementing the unilateral Disengagement Plan, Israel has managed to successfully derail international discussion on the major issues relating to the realisation of Palestinian self-determination, namely settlement expansion, construction of the Annexation Wall, the status of Occupied East Jerusalem and the ending of Israeli occupation. This situation has severely impacted the future prospects of Palestinians being able to exercise their right to self-determination.

Unilateralism

Israeli unilateralism, manifested in "facts in the ground" such as settlements and the Annexation Wall, is effectively imposing an Israeli solution on Palestinians and establishing a *de facto* border between Israel and the West Bank. Unilateralism deprives Palestinians of their right to negotiate over critical issues of the peace process such as land borders, water resources, settlements, refugees and Jerusalem, and effectively prevents Palestinians from exercising their right to self-determination. The implementation of the Disengagement Plan has been the latest act of unilateralism from Israel.

Israel's Unilateral Disengagement Plan

The Disengagement Plan, initiated by Israel while the late President of the PNA, Yasser Arafat, was still in office, underlines the unilateral approach, which now characterises Israel's policies towards the PNA. While Arafat was in office, Israel systematically excluded him from negotiations and prevented him from making decisions, which could have facilitated the exercise of Palestinian self-determination. Following the death of Arafat and the democratic election of Mahmoud Abbas as the

new President, Israel applied the same policy of isolation and exclusion to President Abbas. This Israeli position proves that it is not a willing partner for peace, despite rhetoric to the contrary. The supportive approach of the international community to the Disengagement Plan has facilitated this Israeli position.

The Disengagement Process, which took place between August and September 2005, saw the removal of over 7,000 illegal settlers from the Gaza Strip and the removal of four small settlements in the West Bank (corresponding to only 2 per cent of the total settler population in the OPT). The plan also included the redeployment of Israeli Occupation Forces from internal to external control of the Gaza Strip. The process was seen by many as the end of the occupation in the Gaza Strip but this has been far from the reality that has been experienced on the ground since.

The occupation remains in both its legal and physical form and, as such, the Fourth Geneva Convention still applies. The Israeli military maintains control over Gaza's land borders, air space, territorial waters and also water supplies previously used by settlers. Although the Rafah Agreement of November 2005 has improved access to the outside world for Gazans through Egypt, commercial crossings and Erez checkpoint (between the Gaza Strip and Israel) have been closed for extended periods throughout 2005, causing extreme economic and social hardship. Access between the West Bank and Gaza has not been facilitated, as laid out in the Rafah Agreement; the international airport remains closed, with no prospects of reopening in the future; and plans to develop the seaport have not progressed.

The process has therefore isolated the Gaza Strip further from the West Bank, destroying social, economic and political connections between the territories. In doing so, the process has undermined the contiguity of the territories, which is an essential element of any future process to enable the realization of Palestinian self-determination.

Settlements, the Annexation Wall and East Jerusalem

Unilateralism is also the basis of Israeli policies of settlement expansion, wall construction and the illegal annexation of East Jerusalem. These policies are rapidly eliminating the possibility of a two-state solution, the basis of past peace negotiations, by destroying the territorial contiguity of the West Bank, as well as effectively annexing valuable agricultural land and water resources, essential to any future economically viable Palestinian State.

Settlement expansion has continued in 2005, with the level of building of new homes in the West Bank settlements rising compared to 2004. About 4,000 homes are currently under construction and thousands of more are approved in the main settlement blocs. In fact, the total number of settlers in the OPT increased in 2005, despite the Disengagement Plan.

Construction of the Annexation Wall has also continued, despite the International Court of Justice Advisory Opinion of 2004, which found it to be illegal under international law. The Wall is effectively annexing large tracts of Palestinian land under the guise of security and is creating a *de facto* border which will prejudice any future border negotiations. In addition, the combined effect of the wall, expanding settlements, road networks and checkpoints is effectively dividing the West Bank into three separate areas—Jenin-Nablus, Bethlehem-Hebron and Ramallah. These Bantustan-like areas are isolated from each other, due to travel restrictions between them, and these divisions will make any future viable state impossible, simply from a practical perspective.

Occupied East Jerusalem has been disproportionately impacted by the Wall and settlements, the effects of which will soon completely isolate the city from the West Bank. The Wall incorporates Israeli settlements such as Ma'ale Adumim, while excluding dense Palestinian population centres of Jerusalem such as Shuafat refugee camp. Future plans to expand the settlement of Ma'ale Adumim under Israel's E1 plan, will further isolate the city.

Neither Palestinian political leaders nor the public can envisage a meaningful or viable Palestinian State that does not have East Jerusalem as its capital. The Wall and settlements, however, effectively eliminate this possibility by cutting East Jerusalem off from the West Bank, while also altering the demographic composition of the city. In addition, house demolitions continue on a weekly basis in East Jerusalem, with the effect of dividing the Arab population and altering the demographic composition of the city even further.

Such policies are severely undermining the Palestinian right to exercise self-determination, by creating a situation where an independent Palestinian state is simply unviable. As Israeli construction continues, the impacts of these "facts on the ground" will become irreversible and the possibility of a two-state solution will be lost, if it has not already.

Democratic Elections

The Palestinian people have had an unprecedented year in terms of democratic elections, successfully holding the Presidential and Local Council elections in 2005 and the Palestinian Legislative Council Elections in January 2006. These elections were held in a peaceful and transparent manner and confirmed the commitment of Palestinian people to democracy and pluralism. This has been all the more remarkable, when one considers that the elections were held in the context of the ongoing belligerent occupation.

The international community's response to the results of the PLC elections, which saw a resounding victory for Hamas, have been regrettable, however, significantly undermining the Palestinian right to exercise their democratic right to vote, as well as their right to exercise self-determination. The results of a democratic and legitimate election cannot be disregarded on the basis that the result does not conform to the international community's preference. This democracy must be supported and encouraged and the choice of the Palestinian people should be respected.

It is also worth noting that Israel's policy towards President Abbas, which has consistently undermined his position, actually strengthened the Hamas campaign for the recent elections.

Israeli and International Obligations

Israeli unilateral policies, and the inaction of the international community to intervene against these policies and ensure the implementation of International Law and Human Rights Law in the OPT, are rapidly destroying the potential for Palestinians to exercise their right to self-determination.

FIDH and PCHR request that the Commission adopt a resolution:

- Calling on the Israeli authorities to respect the Palestinian people's right to self-determination by stopping the construction of the Annexation Wall in the OPT, ensuring that its actions are not eliminating the practical ability of the Palestinian people to realise their fundamental right to self-determination.

Rapport de position/Position paper
62^e session Commission des droits de l'Homme des Nations unies/UN Commission on Human Rights

- Calling the international community and the Security Council to endorse the recommendations made by the International Court of Justice in its Advisory Opinion, declaring illegal the construction of the wall in the Occupied Palestinian Territory including in and around East Jerusalem.
- Acknowledging that the unilateral Disengagement Plan has not ended the Israeli occupation of the Gaza Strip and that Israel remains in effective control of the area.

Vietnam

FIDH and its affiliate, the Vietnam Committee on Human Rights (Vietnam Committee) are deeply concerned by the grave violations of freedom of expression and religion in the Socialist Republic of Vietnam.

The Vietnamese government has adopted legislation in flagrant contravention of the International Covenant on Civil and Political Rights (ICCPR), which it continues to implement despite the recommendations of the UN Human Rights Committee (CCPR/CO/75/VNM, 26.7.2002), the Special Rapporteur on Religious Freedom (E/CN.4/1999/58/Add.2, 29.12.1999) and the Working Group on Arbitrary Detention (E/CN.4/1995/31/Add.4, 18.1.1995).

Decree 31/CP, which authorizes "administrative detention" without trial for two years on the mere suspicion of "threatening national security," and the laws and regulations restricting press freedom and the internet have been frequently denounced before this Commission. Decree (38/2005/ND-CP, 18.3.2005) prohibits public demonstrations, thus outlawing the silent, peaceful protests of farmers outside the National Assembly which prompted the Vietnamese Communist party Secretary-general Nong Duc Manh to exclaim: "*It is abnormal for people to demonstrate with placards.*" This legislation was adopted under a 10-year programme of Legal Reform Development Strategy, funded largely by the international community.

At the same time, Vietnam uses indirect repression against dissidents and critics, less visible but deliberately planned, to isolate them and ruin their lives (non-stop Police interrogations, persistent harassments, death threats etc). These underhand methods of persecution have been increased with intensive violence in 2005.

The Patriarch of the outlawed Unified Buddhist Church of Vietnam (UBCV) Thich Huyen Quang and his Deputy Thich Quang Do have spent over 25 years in detention. Despite the government's claims that they are "free," both men are detained under house arrest, surrounded by Security Police and prevented from practicing their religion. The UN Working Group on Arbitrary Detention declared them victims of arbitrary detention (Opinion 18/2005, 26.5.2005).

Thich Quang Do, the UBCV's second ranking dignitary, was intercepted by 50 Security agents who attempted to prevent him *manu militari* from presiding a religious ceremony at Giac Hoa Pagoda in Ho Chi Minh City. Police assaulted Thich Quang

Do and tore his robe. Confronted by the determination of the growing crowds, they eventually withdrew.

Earlier in 2005, Thich Quang Do had been impeded from leaving his Monastery to visit UBCV Patriarch Thich Huyen Quang in the Lunar New Year. Police and officials from the State-sponsored Church had used interrogations and threats to dissuade Buddhists from accompanying Thich Quang Do on his trip. Security Police surrounded the Thanh Minh Zen Monastery day and night, cut off telephone lines and jammed mobile phones. In October-November 2005, the official press launched a denigration campaign against Thich Quang Do.

Thich Vien Phuong was condemned by the Phu Nhuan People's Committee (Ho Chi Minh City) to pay a fine of 15 million dong (the equivalent of 43 months' basic wage in Vietnam) for "*activities of producing films or video-tapes with contents that slander and infringe upon the prestige of organizations, the honour or dignity of individuals, but which are not serious enough to be punished under criminal law...*" (Decision 697/QD-XPHC, 15.9.2005). He had filmed a video message by Thich Quang Do to the UN Commission on Human Rights. Although the video was seized, an audio version was released at the Commission's 61st Session in Geneva in April 2005.

Thich Thien Minh, UBCV Youth Commissioner, released in February 2005 after 26 years arbitrary detention in reeducation camp (UN Special Rapporteur on Religious Freedom, Mr. Amor visited him in the camp in 1998), is still not allowed to pursue his religious activities and return to his former pagoda. He is obliged to live with his brother Huynh Huu Nghia in Bac Lieu (Dong Nai Province). He and his relatives continue to suffer harassments and death threats to press him to renounce monk hood and cease all contacts with the media and human rights organizations overseas.

Members of newly-created UBCV representative boards set up in 10 provinces to defend the fundamental rights of local people are systematically harassed and subjected to intensive Police interrogations, where they are accused of "engaging in political activities," "plotting to overthrow the government" and "advocating democracy and pluralism." They are pressured to resign from the representative boards and cease all connections with the UBCV. Thich Tam Lien, 70, Chairman of the UBCV Representative Board in Binh Dinh Province was interrogated non-stop for two days (16-17 August 2005) without food. He had to be urgently hospitalized.

In Khanh Hoa province, the authorities relentlessly persecuted Buddhist nun Thich Nu Thong Man of Dich Quang Pagoda,

Ninh Hoa village. On 8.12.2005, Police made an unwarranted search of her Pagoda ; the next day, 100 villagers “demonstrated” outside her door—Police paid them each 30,000 dong to participate in the protest, and warned them that they would lose their jobs and their children be expelled from school unless they denounced the nun and forced her to leave.

In An Giang Province, Thich Chon Tam, UBCV Commissioner of Education and Chairman of the local UBCV board is also a victim of repeated harassments, and Police have warned Buddhists against approaching his pagoda. On 20.12.2005, the Nui Sam People’s Committee (Chau Doc) summoned him for interrogation, and threatened to punish him for “illegal activities.” Thich Chon Tam sent a letter to the Vietnam Committee appealing to the UN and the international community for help.

Religious repression extends to all “non-recognized” religions. Ethnic Christian Montagnards are the target of particularly severe persecution. Since November 2005, scores of Montagnards have been tortured and forced to join the State-sponsored Protestant Church. In December 2005, armed troops were deployed in at least 56 villages in Gia Lai, Dak Lak and Dak Nong provinces to intimidate the Montagnards and maintain them under surveillance pending the Christmas celebrations. Since 2001, some 300 Montagnards have been arbitrarily detained.

Critics close to Vietnamese Communist Party (VCP) and VCP veterans are also victims of repression. The most salient example is Hoang Minh Chinh, 83, former Dean of the Hanoi Institute of Marxist-Leninist Philosophy and a vocal proponent of democratic reform. In August 2005, he was allowed to travel to the USA for medical treatment of prostate cancer. During his trip, Hoang Minh Chinh testified before the US Congress’ Foreign Affairs Committee and gave a lecture at Harvard University on the human rights situation in Vietnam. Vietnam responded by launching a vilification campaign against him in the State-controlled media and subjecting him to daily harassments upon his return.

When Hoang Minh Chinh came back to Vietnam on 13 November 2005, he applied to stay at his daughter’s house in Ho-Chi-Minh City for convalescence, but was only granted a 10-day permit. On 19 November, Police informed his daughter that her father’s presence caused serious unrest in the neighbourhood because he was a “traitor” and “an enemy

of the people.” On 21 November, an aggressive crowd of protesters gathered outside his daughter’s house, stabbing the door with knives and throwing toxic chemicals inside. Police observed the scene, but did not intervene. That evening, a crowd of hooligans continued the violent demonstration. When Hoang Minh Chinh returned to Hanoi in early December, he and his family were confronted by several similar protests.

The government curbs and controls the Internet by making users responsible for material they receive. The owners of Vietnam’s 5,000 Internet cafés are responsible for their customers’ on-line activities. Under a recent directive (July 2005), Internet Café owners must follow a 6-month course to learn how to “monitor” their customers, and are effectively transformed into Police auxiliaries. Customers’ identity papers must be strictly controlled and kept on file for 30 days along with a record of their date and Web connections. Vietnamese “cyber-dissidents,” e.g. Pham Hong Son and Nguyen Vu Binh are serving heavy sentences on charges of “spying” (Article 80 of the Criminal Code) or “abusing democratic freedoms” (Article 285) simply for sending E-mails abroad. On 19 October 2005, Truong Quoc Tuan, Truong Quoc Huy and Lisa Pham were arrested for participating in a discussion forum perceived an incitement to “overthrow the regime.”

Furthermore, the FIDH and the Vietnam Committee regret that Vietnam limits its cooperation with UN special mechanisms to stereotype or dogmatic replies which have no relation to the questions asked, or which flagrantly contradict the facts, and invariably revile NGOs and even international institutions. The White Paper “Achievements in protecting and promoting Human Rights in Vietnam” issued by the Vietnamese government in August 2005 is a typical example. Chapter 4 of the document resorts to gross vilifications against human rights defenders, including the FIDH and the Vietnam Committee, as its only argument to deny human rights violations in Vietnam.

We urge the Commission on Human Rights to take urgent action on the grave abuses of the Vietnamese regime and call on its government to extend invitations to the Special Rapporteur on Freedom of Expression, the Special Rapporteur on Religious Freedom and the Special Representative on Human Rights Defenders to make in situ visits to Vietnam as they have requested.

Europe

Belarus

FIDH and Viasna Human Rights Center deplore the further deterioration of human rights in Belarus in 2005. Repression against political opponents increased, new discriminatory law criminalising civil and human rights activities was adopted, violations of freedom of expression, freedom of association and peaceful assembly continued.

Political sentences

The number of imprisoned political opponents increased in Belarus in 2005. On May, 31 Mr. Statkevitch, politicien, and Mr. Sieviaryniets, leader of the youth organisation "Malady Front" were sentenced to three years of prison for the organisation of a peaceful protest action in Minsk on October 18-19, 2004 to contest the results of the parliamentary election and of the referendum. Following an amnesty, their sentences were reduced to one year of prison.

Mr. Klimov, ex-deputy of the High Council was sentenced to 1,5 year of forced labour for the organisation of the peaceful action on March, 25 demanding President Lukashenko to resign.

Valeri Levonevsky, Sergei Skrebetz and Mihkail Marinich, political opponents, arrested in 2004 for their political and civil statements remain in prison.

In 2005, Union of Poles in Belarus, big and well represented association, became a political target of the authorities which provoked a crisis in the relations between Poland and Belarus. In August, 2005 a criminal case was opened against Mr. Pochobut, editor-in-chief of the magazine of Union of Poles in Belarus *Magazyn Polski*, as well as against Mr. Kevlyak, vice-chairman of the Union of Poles in Belarus, against Mr. Pisalnik, press-officer of this union, and Mr. Pozhezky, editor-in-chief of the newspaper *Glos z-nad Nemna*.

In this context of permanent political repressions, FIDH and Viasna Human Rights Center fear that the up-coming presidential elections in March, 2006 will not be free and fair.

Freedom of association and freedom of expression

New amendments to Belarusian Criminal Code which strengthen penal responsibility concerning "acts against people and public security" were adopted following two readings before the Belarusian Parliament, respectively on November 23 and December 8, 2005. The amendments were signed by President A. Lukashenko on December 13, 2005 and entered into force on December 20, 2005. They constitute an additional tool for the authorities to crackdown on the independent civil society in particular in the context of the organisation of the next presidential election, advanced from July to March 2006.

According to the Observatory for the protection of human rights defenders (joint programme of FIDH and OMCT), the new amendments stipulate that anyone who organises activities in the framework of a suspended or liquidated association may face a fine and be arrested and detained for up to six months. In "serious cases" (for which there is no definition), one can be subjected to a "restriction of freedom" sentence for a period up to two years. Human rights defenders might be particularly targeted by this new disposal, since most of independent human rights NGOs were liquidated during the past three years, and since reasons for liquidation were even broadened in the recent "Law on Public Association," adopted in August 2005. As a consequence, it will become extremely difficult for independent organisations to exist as such and conduct activities.

Moreover, any person who provides training or any other type of education aiming at participating in "mass activities," or any person who funds such activities, may face a prison term up to six months, or be sentenced to a "restriction of freedom" sentence of three years (article 293). Also, any person who provides training or any other form of education, aiming at the participation in "group activities which seriously violate public order," or any funding or other material assistance of such activity, may be sentenced to prison for up to six months, and to a "restriction of freedom" sentence of up to two years (article 342). However, there is no precision on the definition neither of a "mass activity" nor of a "group activity."

Furthermore, these amendments provide very serious infringements to freedom of information. Indeed, the new amendments stipulate that “*providing false information to a foreign State or international organisations, concerning the political, economical, military or international situation of the Republic of Belarus, as well as on the judicial situation of Belarusian citizens or any power instance,*” is punishable by either a six-month prison term or a two-year “restriction of freedom” sentence. The amendments also state that any person who would communicate with foreign States or international organisations, “to the detriment of internal security, sovereignty or territorial integrity,” as well as disseminate material with such content, could be sentenced to prison from six months to three years. If such information was distributed through mass media, the “perpetrators” could be sentenced from two to five years in detention.

These amendments followed the “Law on Public associations,” adopted on August 1, 2005, which facilitated the suspension or liquidation of independent organisations by broadening the reasons for sanction against them. The law also strengthened the control of the authorities over NGOs, and created new obstacles to the registration of organisations, as well as an increased takeover on their funding and activities.

In 2005, 68 associations were liquidated by the Ministry of Justice following the court decisions, and 43 others declared their auto-liquidation.

Independent political parties are also under permanent pressure. According to the information received, more than 300 branches and representations of various political parties had their registrations cancelled in 2005.

Right to peaceful assembly

Peaceful demonstrations are regularly and violently repressed in Belarus. In April 2005, a peaceful manifestation called “*Tchernobylsky shlikh*” was severely repressed by special forces of OMON. A minor, Danila Borisevitct, had his arm broken by a policeman.

In January 2005, a new version of the Law on Internal troops of the Ministry of Internal Affairs entered into force. This law allow internal troops to use weapons under a direct “order of the President” and in the circumstances “defined by the President.” This new law can gravely restrict the rights to peaceful assembly in particular in the context of the next presidential election in March 2006.

Torture

According to the information received, torture and inhuman treatment are largely used in custody and prisons of Belarus. People are also beaten and subjected to humiliations during the repressions against non-authorized peaceful demonstrations and after them, when they are kept in custody.

On July, 7, Svetlana Zavadskaya, widow of a journalist Dmitry Zavadsky who disappeared in 2000, was severely beaten during a commemoration action on the 5th anniversary of the disappearance of her husband. The wounds she has got were medically certified but no legal charges were brought against Yuri Davidovitch, a policeman responsible for these acts.

Freedom of the press

The situation of the freedom of the press remains dramatic in Belarus. According to the information received, in late 2005, 17 independent releases were deprived from being distributed through the State distribution services. State group “Beltelecom” remains the only provider of the Internet in the country. The only independent newspaper *Narodnaya Volya* is regularly brought to justice on grounds of administrative sanctions.

Death penalty

Death penalty is still not abolished in Belarus, and people were still condemned to death in 2005. However, the information on the real number of such condemnations and on executions is kept secret by the authorities.

Recommendations

Considering that no progress has been made towards a better protection of human rights in Belarus, FIDH and VIASNA Human Rights Center call upon the Commission on Human Rights to adopt a Resolution on the situation of Human Rights in Belarus which will renew the mandate of the Special Rapporteur on Belarus in view of reporting to the Human Rights Council, and ask the authorities to, *inter alia*:

- Invite the Special rapporteur and cooperate fully with the Special mechanisms of the Commission on Human Rights,

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- guarantee the independence of the judiciary and implement the recommendations of the UN Working Group on Arbitrary Detention,
- take the necessary steps to ensure that those responsible for enforced disappearance of political opponents and businessmen are brought to justice before an independent and impartial tribunal,
- guarantee freedom of expression, association and peaceful assembly in accordance with international and regional human rights instruments,
- guarantee free and fair elections,
- cease harassment and intimidation of people whose views differ from the authorities, reopen liquidated NGOs and educational establishments, and recognize the role of human rights defenders in the field of democracy and the necessity to protect them in accordance with the Declaration on Human Rights Defenders,
- render its laws on the freedom of association consistent with international human rights law,
- abolish death penalty,
- comply with its international and national human rights obligations.

Fédération de Russie/Russian Federation

FIDH expresses its deepest preoccupation at the serious roll-back of the Rule of Law and human rights in the Russian Federation.

Extrajudicial killings, enforced disappearances, torture and looting are still ongoing in Chechnya in 2005 and stay generally unpunished.

The formation of security services consisting of ethnic Chechens, is presented by the Russian authorities as an improvement of the situation and did bring significant changes in the republic. Indeed, representatives of special forces of Ramzan Kadyrov, appointed Vice-Prime Minister for the security bloc and decorated with the order of "Hero of Russia," perpetrate grave human rights violations, including torture, murders and disappearances and benefit from an ever present impunity. The so called "chechenization" in reality only makes the political, human rights and social situation more complicated. Since these military and security units are in majority officially attached to the Russian armed structures, the responsibility for these mass violations is still laying on the Russian authorities.

A practice which become increasingly widespread in 2004 and 2005 is the taking of hostages in order to force the surrender of suspect fighters. The joint FIDH-Memorial international investigation mission which took place in September 2005 observed that torture is still a key element of the anti-terrorist activity of security services in Chechnya and the decisions of courts on the cases related to terrorist activity or participation in illegal armed formations in a great number of cases are based on evidence extorted under torture and self-accusations. Places of illegal detention are still widespread all-over the Chechen Republic.

The unresolved nature of the Chechen conflict, is tremendously affecting the human rights and humanitarian law situation in three neighboring republics of Chechnya: Ingushetia, North Ossetia and Kabardino-Balkaria. The wide range of systemic human rights violations and the impunity of security forces for their criminal acts contribute to the overall deterioration of the security situation in the entire Northern Caucasus region.

Attacks on Human Rights Defenders are increasing alongside restrictions of their rights.

Many organisations are subject to legal proceedings (Russian-

Chechen Friendship Society - RCFS, Association of Soldiers' Mothers of Saint Petersburg), to regular tax inspections (Nizhny-Novgorod Human Rights Society - NNHRS), to threats and attacks (Memorial Saint Petersburg, the Sakharov Museum) and to the theft of data (Memorial Saint Petersburg, Association of Soldiers' Mothers of Saint Petersburg). Mrs. Zhorovlya, a human rights defender, and her son were murdered at their home in Vorkuta in the Republic of Komi (in the North of Russia) on July 21, 2005.

On November, 18 2005, a bill entitled "Amendments to Some Federal Laws of the Russian Federation" was presented before the lower House of Parliament (Duma) addressing all non-profit organisations including those working on the protection and defence of human rights. Even though several restrictive provisions were finally withdrawn from the draft, the law, as adopted in third reading on 23 December 2005, remains in blatant violation of the right of freedom of association, demonstrates a determination to control and silence independant organisations, and to limit the presence of international NGOs on Russian territory. The law will come into force on 10 April 2006 (See the note of the Observatory for the protection of human rights defenders Russian Federation: Amendments to Federal Laws regulating the activity of civil society, January 20, 2006).

Only one week after the adoption of the law, the Russian Federal Security Service has made claims that some Russian human rights NGOs have been funded by representatives of British Intelligence Service in Moscow and alleges that investigation will be made into those NGOs' activities. Among NGOs about which allegation have been made and largely supported by the media including state TV channels are such credible human rights groups as Moscow Helsinki Group, Center for the Development of Democracy and Human Rights, Committee against Torture (*Nizhny Novgorod*).

On February 3, 2006, Mr. Dmitrievsky, executive manager of the Russian-Chechen Friendship Society and editor-in-chief of the newspaper *Pravozaschita*, a joint publication of RCFS and the Nizhny Novgorod Society for Human Rights, was condemned to a two-year suspended prison sentence and to a four-year probation period by the Sovetsky District Criminal Court of Nizhny Novgorod. This means that during four years, Mr. Dmitrievsky will face the risk of being arrested at any moment and detained for two years, in the case he would violate the rules linked to the probation period. Moreover, during this probation period, he will be banned from changing his main place of living and will have to report regularly to the local authorities.

The judge allegedly decided just before the hearing that it would take place in camera, and several observers, including one mandated by the European Union, were at first denied entry to the court. They were finally granted access after long negotiations with the secretary of the Court. Officers of the Federal Security Bureau (FSB) had already denied access to the Russian territory to an observer at the trial of Mr. Dmitrievsky, Mr. Bill Bowring, a British lawyer.

For several years observers have noted the **development of radical nationalist movements** in Russia. These movements are fed by daily racism against foreigners and are accompanied by the construction of pseudo-scientific theories to justify the violence against non-Russians. Whereas in the 1990s this latent racism remained confined to the verbal domain, today it has led to a physical expression. Thus, in 2005, 366 people were victims of racial attacks in Russia, 28 of which ended in death according to the statistics of the SOVA Centre, specialist in the field of racial discrimination, which itself admits that these figures are not exhaustive.

On January, 11, 2006 a young man rushed into a Moscow synagogue shouting "I came to kill you" and badly wounded ten people with a clear intention to stab them to death.

Furthermore, FIDH notes with a great concern the extremely serious situation in the Russian army. Despite of years of denunciation by human rights organisations (such as Soldiers Mothers of Saint Petersburg, Soldiers Mothers Committees and others) of the practice of *dedovshina* including tortures, ill-treatment, all kind of physical violence and even of a slavery which are commonly used against conscripts and lower-ranked soldiers, no progress has been made and grave violations of human rights in the army stay unpunished.

Recommendations

FIDH requests the Commission on Human Rights to recognize the gravity of the situation prevailing in the Russian Federation, notably in Chechnya, and adopt a resolution by which it will ask the authorities to *inter alia*:

- condemn ongoing grave violations of human rights in Chechnya, in particular extrajudicial killings, enforced disappearances and torture in and around the Republic and impunity of authors of these violations and urge Russian authorities to put an end to all acts of violence against civilians;

- urge Russian authorities to invite special procedures of the Commission of Human Rights to visit Chechnya, to gather information on violations of human rights and report on that matter to the Human Rights Council and the General Assembly;

- remind Russian authorities that all legislative or institutional reform must comply with principles of democracy and the Rule of Law, particularly the representation of all trends making up society and urge them to comply with human rights instruments on freedom of the association;

- guarantee the physical and psychological integrity of human rights defenders and stop immediately all acts of violence and harassment towards them, carry out a complete and impartial investigation on cases of murder, attack, and harassment, and identify perpetrators of these acts, bring them to trial and punish them according to applicable law, stop all acts of defamation against human rights defenders;

- guarantee a fair and impartial trial to Mr. Dmitrievsky, executive manager of the Russian-Chechen Friendship Society, during the examination of his case in appeal;

- guarantee human rights defenders and independent journalists free access to Chechnyan territory, so that they may exercise their tasks freely;

- urge Russian authorities to fight racism through the adoption of appropriate statutes and creation of efficient mechanisms;

- improve conditions of the military service, and criminalize the practice of *dedovshina*;

- and more generally comply with the provisions of the Declaration on Human Rights Defenders, as adopted by the United Nations on December 9, 1998.

Ouzbékistan/Uzbekistan

FIDH expresses its deepest concern at the serious rollback of the rule of law and human rights in Uzbekistan. Dangerous trends which were noticed recent years became especially flagrant after the Andijan's events.

On 13 May, in Andijan, a town of 300,000 inhabitants situated in the valley of the Ferghana, the army opened fire on thousands of demonstrators (between 10,000 and 30,000) who had gathered in the town centre to protest against the trial of 23 people accused of belonging to the radical Islamic group, Akramia, and to demand an improvement in living conditions. During the night of 12 to 13 May, weapons were taken from a military building by men who took the regional administration and the high security prison in Andijan by storm, releasing the 23 accused and more than a thousand inmates.

Fearing for their safety, hundreds of civilians have crossed the border into Kyrgyzstan where several refugee camps have been set up.

Andijan was cordoned off by a huge military and police presence. Hundreds of people have been arrested and shots were heard in Andijan during the night of 16 to 17 May. Some eyewitnesses have mentioned the existence of communal ditches which have been dug in the public parks to hide any trace of the extrajudicial executions.

President Karimov denied giving the order to fire on the crowd and accused Islamic extremists of using women and children as human shields. Since 13 May there has been a news blackout, with access to foreign media blocked throughout Uzbekistan, several journalists expelled from the town and some independent media closed.

The process which followed these events were totally unfair, conducted with the most flagrant violations of all international standards. The defendants confessed to the charges under torture or coercion, witnesses supported the government's version of events, the defense didn't have any role to play. In September 2005, Louise Arbour, UN Commissioner for Human Rights, declared that these trials had been "marred by allegations of irregularities and serious questions remained about its fairness."

Furthermore, government authorities severely muzzled the civil society in order to destroy all voices trying to speak out in the Andijan tragedy and its consequences, including the systematic persecution and criminal prosecutions based on

politically-motivated charges. Some non-gouvernemental organisations were closed like the Bukhara Centre for Humanitarian Law or Internews, and others became a target of permanent harassments and attacks, as members of the Human Rights Society of Uzbekistan (HRSU). According to the information received, tens of journalists and human rights defenders were forced to flee the country fearing persecution; many others were put in jail in the aftermath of inequitable judiciary proceedings.

On 21 May 2005, Mr. Saidjahon Zaynabitdinov, president of the human rights organisation Appeliatsia (Appeal) based in Andijan, was arrested and secretly detained after making statements to the international media. Since his incarceration in Tashkent prison, he has not been allowed to meet his lawyers nor members of his family. On 11 January 2006, Mr. Zaynabitdinov was sentenced to seven years of imprisonment by the Tashkent Court.

Also, in March 2005, Mrs. Elena Urlaeva, president of the Organisation for the Defence of Rights and Freedoms of Citizens of Uzbekistan and member of the opposition party Ozod Dekhonlar, discovered that her name appeared on a "black list," which was published by Mr. Safar Abdullaev, an independent journalist, and which anticipated various types of punishment for sixty-five activists (being sent to a prison colony or psychiatric hospital, receiving an intravenous injection of the "lupus" virus, etc.). She was badly beaten and arrested several times in 2005. On 21 October, she was forced, against her will, to take a medical treatment for schizophrenia, which could have incurable consequences for her future health. She was released from the hospital at the end of October 2005.

In October 2005, police arrested Mukhtabar Tojibaeva, an outspoken critic of the government and chairwoman of the Burning Hearts human rights club in Margilan, on the eve of her departure for an international conference for human rights defenders at risk. Tojibaeva had been actively involved in defending the rights of the group of twenty-three businessmen whose trial had sparked the Andijan events. She was charged with extortion and fraud. His trial is ongoing, as for January 2006, behind close doors and with numerous irregularities.

At the end of 2005, amendments were brought into the Criminal Code and the Code on Administrative Liability of Uzbekistan, establishing sanctions for employees of foreign and international NGOs who carry out political and funding activities beyond the declared activities of their organization, as well as new sanctions for already registered NGOs and sanctions for anyone participating in the activities of non-registered NGOs or groups.

Administration of Justice and death penalty

The judiciary remains wholly dependent on political authorities and largely corrupted.

Moreover, the death penalty is still practiced in this country and several hundreds of men have been sentenced to death and executed since the country became independent in 1991, accused of terrorism or murder with aggravating circumstances, without the chance to argue their rights.

It is currently impossible to know exactly how many people are condemned to death each year as the gouvernement has failed to publish comprehensive statistics about the number of death sentences and executions. As a result, depending on the source, the number of execution a year in Uzbekistan fall somewhere between 52 and 780.

Persons arrested see their rights blatantly violated: the time limits for the detention in custody are violated; they are not informed about their rights, corruption prevails; legality of detention is not a subject to judicial control; defendant's relatives are not informed; lawyers are victims of all kinds of pressure in order to dissuade them from defending their clients. A number of testimonies given first-hand to the FIDH representatives in May 2005 confirm that many people are condemned to death based on confessions obtained under torture and that corruption is an integral part of investigation, trial and appeal process in such cases.

Conditions of detention awaiting execution amount to cruel, inhuman or degrading treatment: in addition to the small size of the cells, the lack of proper food and exercise, the lack of proper bedding and the very strict censure of correspondence, the secrecy surrounding executions increase the suffering of both prisoners and their families. Neither the prisoner nor their family are informed of the date of execution. The continuing secrecy around the date, place of execution and burial is needlessly cruel to relatives. The bodies of the condemned are never returned to their families. The UN Special Rapporteur on Torture as well as the UN Human Rights Committee consider that this practice constitutes cruel, inhuman or degrading treatment, prohibited under international human rights instruments ratified by Uzbekistan. On the 1st of August 2005, a presidential decree announcing that the death penalty will be abolished on January 1st, 2008, was adopted. The FIDH welcomed that positive step but regrets that the abolition is not provided for with immediate effect or, as a minimum, that a

moratorium is not adopted on executions until full abolition will be in force.

Recommendations

FIDH requests the Commission on Human Rights to recognize the gravity of the situation prevailing in Uzbekistan and adopt a resolution by which it will transfer the 1503 procedure into a public procedure, and name a Special Rapporteur on Uzbekistan, with the task of presenting a report to the UN Human rights council. The resolution should also urge the Uzbek authorities to, *inter alia*:

- cooperate fully with the Special rapporteur, as well as with the different UN Human Rights Special Mechanisms,
- make possible an international mission of investigation into the events in Andijan and to establish accountability for the acts of violence
- take immediate and concrete steps to tackle endemic corruption, investigate corrupt officials and prosecute to the full extent of the law
- guarantee the independence of the judiciary in conformity with the ICCPR and the UN Basic Principles on the Independence of Judiciary
- to guarantee the physical and psychological integrity of all citizens and the observance of human rights in accordance with its international and regional undertakings
- cease harassment and intimidation of people whose views differ from the authorities,
- to put an end to all acts of harassment and reprisals against human rights defenders in Uzbekistan in conformity with the Declaration on Human Rights Defenders, adopted by the United Nations' General Assembly on December 9, 1998
- render its laws on the freedom of association consistent with international human rights law
- adopt an immediate moratorium on the executions till the death penalty will be completely abolished
- more generally, conform with the provisions of the Universal Declaration on Human Rights, and with all other international human rights instruments to which Uzbekistan is a party.

Interventions thématiques/Thematic Interventions

Défenseurs des droits de l'Homme/Human rights defenders

En 2005, les défenseurs des droits de l'Homme ont continué d'être confrontés à de multiples actes de représailles, en raison de leurs activités de défense et de promotion des droits de l'Homme .

En effet, partout dans le monde, les défenseurs qui ont cherché à dénoncer les violations des droits de l'Homme ou le climat d'impunité dont bénéficient les auteurs de tels actes ont été la cible privilégiée des autorités. Cette répression est multiforme, en allant de l'assassinat (comme par exemple en République démocratique du Congo, Colombie), aux menaces de mort (Guatemala, Ouzbékistan), arrestations et détentions arbitraires (Éthiopie, Iran, Chine, Tunisie), enlèvements ou disparitions forcées (Soudan, Zimbabwe, Colombie, Mexique, Russie, Égypte, Irak, Afghanistan), mauvais traitements (Kenya, Cuba, Ouzbékistan, Tunisie), aux campagnes de diffamation (RDC, Pérou, Russie, Tunisie, Vietnam).

Les défenseurs des droits économiques, sociaux et culturels, au premier rang desquels les défenseurs des communautés indigènes ou des minorités nationales ou sexuelles (notamment au Chili, Chine, Zimbabwe) et ceux des droits des travailleurs (Colombie, Djibouti, Philippines), n'échappent pas à la violence.

D'autre part, nombre d'Etats ont une nouvelle fois largement recouru à l'arsenal législatif pour durcir les conditions d'enregistrement des ONG, faciliter leur suspension ou leur dissolution, ou encore limiter leur accès aux financements étrangers (Biélarus, Fédération de Russie, Ouzbékistan, Rwanda, Tunisie).

Enfin, l'intégrité physique et psychologique des défenseurs reste particulièrement mise à mal dans les pays ou zones de conflits, tels que l'Afghanistan, la Colombie, la Côte d'Ivoire, l'Irak, le Népal, les Philippines, la RDC, ou encore la Tchétchénie.

Aucun continent n'est ainsi épargné par le phénomène de répression à l'encontre des défenseurs, et une mobilisation accrue est plus que jamais nécessaire pour sauver ce qui fait l'essentiel des droits de l'Homme : le respect de la dignité de toute personne.

Après six ans d'un travail d'une rigueur remarquable et d'une ampleur considérable, le mandat de Mme Hina Jilani au poste de Représentante spéciale du Secrétaire général des Nations unies sur les défenseurs des droits de l'Homme s'achève. Tant l'importance du travail effectué par la Représentante spéciale que la tâche qui reste à réaliser plaident pour que ce mécanisme soit non seulement renouvelé, mais renforcé, et qu'il soit doté de moyens accrus pour mener à bien sa mission.

À cet égard, l'Observatoire pour la protection des défenseurs des droits de l'Homme (programme conjoint de la FIDH et de l'OMCT) appelle la Commission à :

- Renouveler le mandat de Représentant spécial du Secrétaire général des Nations unies sur la situation des défenseurs des droits de l'Homme, en lui assurant le soutien matériel et financier nécessaire au bon exercice de ce mandat ;

- Appeler les États à mettre en œuvre l'ensemble des principes présentés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société, de promouvoir et de protéger les droits de l'Homme et les libertés fondamentales universellement reconnus, au travers de l'adoption de la Déclaration par les parlements nationaux et de sa diffusion, la mise en œuvre de campagnes de solidarité avec les défenseurs, et le développement de mécanismes de protection à leur égard.

- Exhorter les États à s'assurer que les mesures de sécurité nationale, y compris celles adoptées au nom de la lutte contre le terrorisme, sont conformes aux normes et standards internationaux en matière de droits de l'Homme, et qu'elles ne servent pas à justifier de restrictions disproportionnées aux libertés fondamentales ou à l'activité des défenseurs.

- Encourager les États à inviter dans leurs pays le Représentant spécial du Secrétaire général des Nations unies et à coopérer avec lui.

1. Ainsi, le rapport annuel de l'Observatoire, à paraître en mars 2006, recense en 2005 les cas de 1 172 défenseurs victimes de répression dans près de 90 pays, dont 115 cas d'assassinats ou de tentatives d'assassinat.

Disparitions forcées/Enforced Disappearances

After the adoption on 23 September 2005 by the United Nations Working Group of a Draft International Convention for the protection of all persons from enforced disappearance, Amnesty International, Human Rights Watch, the International Commission of Jurists, and the International Federation of Human Rights called on all U.N. Member States to ensure that the U.N. General Assembly quickly adopts by consensus the convention. The organisations also called on States to aim for prompt ratification of this instrument.

The treaty has been drafted by a working group established pursuant to resolution 2001/46 of the Commission on Human Rights. At its fifth session in September 2005 the Working Group adopted the draft text of the International Convention for the Protection of All Persons from Enforced Disappearance and agreed to forward it to the Commission for consideration.

On the occasion of the 62nd session of the UN Commission on Human Rights, the three organizations call on Members of the Commission to approve the draft adopted by the Working Group and to transmit it to the General Assembly (via ECOSOC) for its prompt adoption.

Our organizations express our gratitude to the delegations that contributed to the adoption of this draft and congratulate the chairman of the Working Group for his tenacity, commitment and tireless work on behalf of the victims of forced disappearances.

This Convention represents an extremely important development in the fight against enforced disappearances and for the protection of victims and their families. On the whole, the adopted text meets the expectations of the NGOs. We would like to express our satisfaction with regard to the following points:

First, the Convention is an autonomous treaty endowed with its own treaty-monitoring body. This choice represents an appropriate recognition of not only the extreme seriousness of the multiple violations of human rights and international crime that enforced disappearance constitutes, but also of the suffering of victims of forced disappearances and of their families' tireless fight to locate them. This choice is also a guarantee of the treaty's effectiveness in the future, including in the event of a reform of the UN treaty monitoring bodies.

The Convention constitutes a large step forward in a long

historical process. It effectively marks a significant development in applicable international law, all the while based on firmly established standards of customary international law. The Convention also responds to a substantial gap in the law –the absence of a treaty to address the multiple violations of human rights and international crime that enforced disappearance represents. The organisations welcome the recognition by the Convention of the right not to be subjected to enforced disappearance and the requirement put on States to prohibit and criminalise this practice in their national legislation. The Convention includes provisions related to the criminal responsibility of subordinates and superiors, to national and international preventive measures, extradition and international cooperation.

Moreover, the Convention recognizes that, in certain circumstances, enforced disappearances can be considered a crime against humanity and therefore be subject to an international criminal prosecution, even extending as far as a response of the whole international community through the organs of the United Nations.

The Convention establishes a very significant body of legal obligations in relation to prevention, such as the prohibition of secret detention; the deprivation of liberty solely in officially recognised and supervised places of detention that are equipped with a detailed register of the detainees; and non-derogable rights to *habeas corpus* and to obtain information on detainees.

The Convention recognises the right to truth and to reparation for victims and their family, as well as the right to form organisations and associations to fight against enforced disappearances. It also deals with the question of the wrongful removal of children whose parents are victims of the crime of enforced disappearance, the falsification of the children's identity and their adoption.

The Convention is innovatory in its international mechanism and procedures for monitoring and protection. It provides for a Committee on enforced disappearances that, in addition to functions of monitoring and consideration of individual and inter-state complaints, has a humanitarian urgent procedure, the power to undertake field inquiries and the ability to bring to the attention of the UN General Assembly situations of widespread and systematic practice of enforced disappearance.

Rapport de position/Position paper
62° session Commission des droits de l'Homme des Nations unies/UN Commission on Human Rights

Our organisations believe that the power of the Committee to recommend urgent action is of particular importance to prevention and protection.

The Convention will be an invaluable tool in the fight against impunity for perpetrators of enforced disappearances. For NGOs it represents an invaluable advocacy instrument.

Amnesty International, the International Commission of Jurists and the International Federation of Human Rights would like to pay tribute to the families of the disappeared, who have inspired our organizations with their courage over many years and have given us hope.

As the families maintain this hope, we cannot fail to have it too.

Droits économiques, sociaux et culturels/Economic, Social and Cultural Rights

FIDH believes in the universality, indivisibility and interdependence of all human rights, as affirmed by the 1993 Vienna Declaration and Program of Action, we also believe in the equal justiciability of all human rights and in the right to a remedy and reparations for the victims of violations of all human rights.

FIDH has been active for several years in advocating for the enforcement and justiciability of economic, social and cultural rights. The FIDH would like to draw the Commission's attention on a few worrying situations.

In December 2005, FIDH published a joint report with Greenpeace entitled *End of Life Ships - the human cost of breaking ships*, which shed light on the extremely poor working and environmental conditions that are still prevailing at ship-breaking yards in India and Bangladesh. A range of fundamental rights at work, including the right to organise and the right to the highest to a healthy environment are violated on a daily basis.

In Zimbabwe, mass forced evictions have been carried since May 2005 under "Operation Restore Order," conducted by the Zimbabwean government. Hundreds of thousands people were forcibly evicted from their allegedly illegal homes in a violent crackdown on shanty towns throughout the country. Since then, Zimbabwe has been denying assistance and protection to the displaced persons.

In Central America, violations of human rights are persistent in the free-trade zones or maquilas. A recent report of FIDH highlighted the violations of workers' rights and in particular

of women in the maquila industries in Salvador, Guatemala, Nicaragua and Honduras.

In the Peoples' Republic of China, as pointed out by a forthcoming report by FIDH, the right to housing is massively violated due to a large number of forced evictions in major cities. Further, people protesting against the conditions in which these evictions are carried out are being repressed.

As stated by Ms. Louise Arbour, the High Commissioner for Human Rights, at the opening of the third session of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, we believe that "*poverty and other denials of human rights can greatly increase the risk of instability and violence*" whereas "*improving respect for economic, social and cultural rights is essential to ensuring the contribution of human rights to both development and security.*"

FIDH is concerned that the historical categorization of human rights between civil and political rights on the one hand and economic, social and cultural rights on the other hand has been detrimental to the implementation of economic, social and cultural rights.

However, the justiciability of economic, social and cultural rights is finding increasing recognition at both the national and regional level, as shown by case-law. At the international level, the Commission on Human Rights has a great role to play in order to redress the current unbalance between civil and political rights and economic, social and cultural rights.

* * *

Protocole additionnel au PIDESC/Additional Protocol to the ICESCR

FIDH strongly supports the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR) since a communication procedure would contribute to providing an effective remedy for victims of economic, social and cultural rights violations, clarify State Party obligations under the ICESCR through the development of international jurisprudence, and provide guidance to State parties in the implementation of those rights at the national level.

We would like to stress the importance that the procedure created under an OP should consider all rights included in the Covenant. An OP enabling a selection of certain rights by States would create a hierarchy between rights and undermine the holistic nature of the rights contained in the Covenant, and thus the universality, indivisibility and interdependence of all human rights.

FIDH is pleased with the progress made during the third session of the "Open-Ended Working Group to Consider Options regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights."

In order to put an end to the impunity concerning violations of economic, social and cultural rights, and to provide effective remedy to the victims, the FIDH recommends to the

Commission to adopt a resolution which will *inter alia*:

- Welcome the progress made during the third session of the working group;
- Adopt the report of the third session of the "open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural rights."
- Renew the mandate of the Open-Ended Working Group for a period of two years in order to elaborate a draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights establishing a communication procedure.

Special Procedures

In order to **strengthen the implementation of economic, social and cultural rights**, the FIDH believes that Special Procedures of the Commission on Human Rights on specific ESC rights are of fundamental importance.

FIDH calls upon the Commission to renew the mandates of the Special Rapporteur on adequate housing; of the Special Rapporteur on the right to food; and of the Independent Expert on economic reform policies and foreign debt.

1. See E/CN.4/2006/47.

Responsabilité sociale des entreprises/Corporate Social Responsibility

States have the primary responsibility to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law. However, it is now widely recognised that business enterprises hold a responsibility with regards to human rights. In that spirit, FIDH welcomed the appointment by last year's Commission of a Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises.

The Norms on the responsibilities of transnational corporations and other business enterprises regarding human rights adopted by the Sub-Commission for the Protection and Promotion of Human Rights on 13 August 2003 are a unique undertaking to identify and clarify the responsibilities on businesses that are appropriate within their sphere of activity and influence. Although certain provisions of the Norms may be further clarified—such as, indeed, the precise significance of the notions of “complicity” and “sphere of influence” in the diverse circumstances which companies may face in the course of their activities—, the FIDH believes these Norms should be considered as part of the *acquis* for further clarification of these responsibilities.

Whatever progress is made on the question of the accountability of transnational corporations with regard to human rights, this should not restrict the scope of the obligation imposed on States under international law to protect the human rights of all persons under their jurisdiction. Wherever they operate, transnational corporations should be effectively controlled by the territorially competent State, on the national territory of which they pursue their activities and States should, insofar as legally and practically possible, control the activities abroad of the corporations which are incorporated under their jurisdiction.

FIDH is concerned that discussions on voluntary initiatives might serve to postpone advances in the better regulation of transnational corporations, either by imposing directly obligations on transnational corporations under international law, or by further clarifying the obligations of States to better regulate the activities of corporations operating under their jurisdiction or which they may control. Voluntary initiatives such as charters or codes of conduct, international framework agreements, adherence to standards such as those

proposed by the ILO or the OECD, or participation in the Global Compact, are very welcome and, indeed, essential to improving corporate responsibility. But they should not be seen as a substitute for the reaffirmation of the obligations imposed to all under the international law of human rights, and they should not be presented as such.

FIDH urges the Commission on Human Rights to adopt a Resolution on human rights and transnational corporations and other business enterprises which will *inter alia*:

- Reaffirm clearly that States have the primary responsibility to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law;

- Welcome the report of the United Nations High Commissioner for Human Rights on the sectoral consultation entitled “Human Rights and the extractive industry” (E/CN.4/2006/92);

- Welcome the report of the Special Representative on the issue of human rights and transnational corporations and other business enterprises to further (E/CN.4/2006/97),

- Request the Office of the High Commissioner for Human Rights to convene in cooperation with the Special Representative, a meeting with senior executives from companies, experts and NGOs on specific human rights issues faced by corporations;

- Decide to annually review the progress of the consultative process lead by the OHCHR including an assessment of the progress realized towards the establishment of international standards on the human rights responsibilities;

Finally, the FIDH invites the Commission to strengthen the means at the disposal of the mandate holders in the field of economic, social, and cultural rights, to enable them to undertake further missions *in situ*, as well as follow-up activities in particular on the responsibilities of business with regards to these rights.

Extrême pauvreté/Extreme Poverty

FIDH believes that the Commission on Human Rights has an important role to play in the fight against extreme poverty, reaffirming that it has to be based on the respect of all human rights, and their indivisibility. In this regard, the FIDH urges the Commission on Human Rights to adopt a Resolution, which will, *inter alia*:

- Recognize that extreme poverty is a particular situation of poverty, in which the number, extent and duration of deprivations of resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights has led to a situation where it is extremely difficult, or even impossible, for persons and communities, to reassume their responsibilities and to regain the enjoyment of their rights, in a foreseeable future, and that the number, extent, and duration of deprivations create an invisible, but very real threshold, under which persons and communities are trapped, and impede them to exercise the whole set of their rights: civil, cultural, economic, political and social;
- Reaffirm that the fight against extreme poverty must be based on the respect of all human rights, and their indivisibility;

- Reaffirm the necessity to enable those living in extreme poverty to have the cultural, social, legal and material means to be in charge of their future, and to contribute to the elaboration, application and evaluation of the policies concerning their own lives;

- Invite all the special mechanisms on human rights to take into account, in the accomplishment of their mandates, the implication for those living the specific situation of extreme poverty, as a cross cutting element;

- Decide to contribute to the elaboration of international standards on extreme poverty and human rights, for the full realization of human rights in the specific context of extreme poverty, taking into account their indivisibility and having in view their effective justiciability;

- Encourage the independent expert on extreme poverty and the OHCHR, in order to study the link between extreme poverty and human rights, to develop, with the participation of concerned people, a broad set of indicators, in order to identify and to measure extreme poverty in all its dimensions.

La FIDH représente 141 organisations des droits de l'Homme réparties sur les 5 continents

141 organisations à travers le monde

Afrique du Sud -Human Rights Committee of South Africa	Defensa de los Derechos Humanos	Direitos do Homem	droits humains	Rwanda -Association pour la défense des droits des personnes et libertés publiques
Albanie -Albanian Human Rights Group	Colombie -Corporación Colectivo de Abogados Jose Alvear Restrepo	Irak -Iraqi Network for Human Rights Culture and Development (Royaume Uni)	Mauritanie -Association mauritanienne des droits de l'Homme	Rwanda -Collectif des ligues pour la défense des droits de l'Homme au Rwanda
Algérie -Ligue algérienne de défense des droits de l'Homme	Colombie -Instituto Latinoamericano de Servicios Legales Alternativos	Iran -Centre des défenseurs des droits de l'Homme en Iran	Mexique -Comisión Mexicana de Defensa y Promoción de los Derechos Humanos	Rwanda -Ligue rwandaise pour la promotion et la défense des droits de l'Homme
Algérie -Ligue algérienne des droits de l'Homme	Congo Brazzaville -Observatoire congolais des droits de l'Homme	Iran -Ligue de défense des droits de l'Homme en Iran (France)	Mexique -Liga Mexicana por la Defensa de los Derechos Humanos	Sénégal -Organisation nationale des droits de l'Homme
Allemagne -Internationale Liga für Menschenrechte	Côte d'Ivoire -Ligue ivoirienne des droits de l'Homme	Irlande -Irish Council for Civil Liberties	Moldavie -League for the Defence of Human Rights	Sénégal -Rencontre africaine pour la défense des droits de l'Homme
Argentine -Centro de Estudios Legales y Sociales	Côte d'Ivoire -Mouvement ivoirien des droits de l'Homme	Israël du Nord -Committee On the Administration of Justice	Mozambique -Liga Mocambicana Dos Direitos Humanos	Serbie et Monténégro -Center for Antiwar Action - Council for Human Rights
Argentine -Comite de Acción Jurídica	Croatie -Civic Committee for Human Rights	Israël -Adalah	Nicaragua -Centro Nicaraguense de Derechos Humanos	Soudan -Sudan Organisation Against Torture (Royaume Uni)
Argentine -Liga Argentina por los Derechos del Hombre	Cuba -Comisión Cubana de Derechos Humanos y Reconciliación National	Israël -B'tselem	Niger -Association nigérienne pour la défense des droits de l'Homme	Soudan -Sudan Human Rights Organization (Royaume Uni)
Autriche -Österreichische Liga für Menschenrechte	Écosse -Scottish Human Rights Centre	Israël -Public Committee Against Torture in Israel	Nigeria -Civil Liberties Organisation	Suisse -Ligue suisse des droits de l'Homme
Azerbaïdjan -Human Rights Center of Azerbaijan	Égypte -Egyptian Organization for Human Rights	Italie -Liga Italiana Dei Diritti Dell'Uomo	Nouvelle-Calédonie -Ligue des droits de l'Homme de Nouvelle-Calédonie	Syrie -Comité pour la défense des droits de l'Homme en Syrie
Bahrein -Bahrain Human Rights Society	Égypte -Human Rights Association for the Assistance of Prisoners	Italie -Unione Forense Per la Tutela Dei Diritti Dell'Uomo	Ouganda -Foundation for Human Rights Initiative	Tanzanie -The Legal & Human Rights Centre
Bangladesh -Odhikar	El Salvador -Comisión de Derechos Humanos de El Salvador	Jordanie -Amman Center for Human Rights Studies	Ouzbékistan -Legal Aid Society	Tchad -Association tchadienne pour la promotion et la défense des droits de l'Homme
Bélarus -Human Rights Center Viasna	Équateur -Centro de Derechos Economicos y Sociales	Jordanie -Jordan Society for Human Rights	Pakistan -Human Rights Commission of Pakistan	Tchad -Ligue tchadienne des droits de l'Homme
Belgique -Ligue des droits de l'Homme	Équateur -Comisión Ecumenica de Derechos Humanos	Kenya -Kenya Human Rights Commission	Palestine -Al Haq	Thaïlande -Union for Civil Liberty
Bénin -Ligue pour la défense des droits de l'Homme au Bénin	Équateur -Fundación Regional de Asesoría en Derechos Humanos	Kirghizistan -Kyrgyz Committee for Human Rights	Palestine -Palestinian Centre for Human Rights	Togo -Ligue togolaise des droits de l'Homme
Bolivie -Asamblea Permanente de los Derechos Humanos de Bolivia	Espagne -Asociación Pro Derechos Humanos	Kosovo -Conseil pour la défense des droits de l'Homme et des Libertés	Panama -Centro de Capacitación Social	Tunisie -Conseil national pour les libertés en Tunisie
Boutan -People's Forum for Human Rights in Bhutan (Népal)	Espagne -Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos	Laos -Mouvement lao pour les droits de l'Homme (France)	Pays-Bas -Liga Voor de Rechten Van de Mens	Tunisie -Ligue tunisienne des droits de l'Homme
Brésil -Centro de Justicia Global	États-Unis -Center for Constitutional Rights	Lettonie -Latvian Human Rights Committee	Pérou -Asociación Pro Derechos Humanos	Turquie -Human Rights Foundation of Turkey
Brésil -Movimento Nacional de Direitos Humanos	Éthiopie -Ethiopian Human Rights Council	Liban -Association libanaise des droits de l'Homme	Pérou -Centro de Asesoría Laboral	Turquie -Insan Haklari Derneği / Ankara
Burkina Faso -Mouvement burkinabé des droits de l'Homme & des Peuples	Finlande -Finnish League for Human Rights	Liban -Foundation for Human and Humanitarian Rights in Lebanon	Philippines -Philippine Alliance of Human Rights Advocates	Turquie -Insan Haklari Derneği / Diyarbakir
Burundi -Ligue burundaise des droits de l'Homme	France -Ligue des droits de l'Homme et du Citoyen	Liban -Palestinian Human Rights Organization	Polynésie française -Ligue polynésienne des droits humains	Union européenne -FIDH AE
Cambodge -Cambodian Human Rights and Development Association	Grèce -Ligue hellénique des droits de l'Homme	Liberia -Liberia Watch for Human Rights	Portugal -Civitas	Vietnam -Comité Vietnam pour la défense des droits de l'Homme (France)
Cambodge -Ligue cambodgienne de défense des droits de l'Homme	Guatemala -Centro Para la Acción Legal en Derechos Humanos	Libye -Libyan League for Human Rights (Suisse)	RDC -Ligue des Électeurs	Yémen -Human Rights Information and Training Center
Cameroun -Maison des droits de l'Homme	Guatemala -Comisión de Derechos Humanos de Guatemala	Lithuanie -Lithuanian Human Rights Association	RDC -Association africaine des droits de l'Homme	Yémen -Sisters' Arabic Forum for Human Rights
Cameroun -Ligue camerounaise des droits de l'Homme (France)	Guinée -Organisation guinéenne pour la défense des droits de l'Homme	Malaisie -Suaram	RDC -Groupe Lotus	Zimbabwe -Zimbabwe Human Rights Association Zimrights
Canada -Ligue des droits et des libertés du Québec	Guinée -Organisation guinéenne pour la défense des droits de l'Homme	Malie -Association malienne des droits de l'Homme	République de Djibouti -Ligue djiboutienne des droits humains	
Centrafrique -Ligue centrafricaine des droits de l'Homme	Guinée -Organisation guinéenne pour la défense des droits de l'Homme	Malte -Malta Association of Human Rights	République Tchèque -Human Rights League	
Chili -Comite de Defensa de los Derechos del Pueblo	Guinée -Organisation guinéenne pour la défense des droits de l'Homme	Maroc -Association marocaine des droits humains	Roumanie -Ligue pour la défense des droits de l'Homme	
Chine -Human Rights in China (USA, HK)	Guinée -Organisation guinéenne pour la défense des droits de l'Homme	Maroc -Association marocaine des droits humains	Royaume-Uni -Liberty	
Colombie -Comite Permanente por la	Guinée -Liga Guineense dos	Maroc -Organisation marocaine des	Russie -Citizen's Watch	
			Russie -Moscow Research Center for Human Rights	

La Fédération internationale des ligues des droits de l'Homme (FIDH) est une organisation internationale non gouvernementale attachée à la défense des droits de l'Homme énoncés par la Déclaration universelle de 1948. Créée en 1922, elle regroupe 141 organisations membres dans le monde entier. À ce jour, la FIDH a mandaté plus d'un millier de missions internationales d'enquête, d'observation judiciaire, de médiation ou de formation dans une centaine de pays.

La Lettre

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