

# fidh

Fédération internationale des ligues des droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,  
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation  
for Human Rights

Federación Internacional  
de los Derechos Humanos

الفدرالية الدولية لحقوق الانسان

## UN HUMAN RIGHTS COUNCIL

**7<sup>th</sup> Session**

**3-28 March 2008**

## POSITION PAPER

*FIDH - Fédération internationale des Ligues des Droits de l'Homme*

17, Passage de la Main d'Or – 75011 Paris, France – Phone +33 1 43 55 2518, fax, +33 1 43 55 1880

*Délégation permanente auprès des Nations Unies à Genève* c/o Maison des Associations, 15, rue des Savoises – 1205  
Genève, Suisse - Tel : 0041 (0) 22 700 12 88 Fax : 0041 (0) 22 321 54 88

## Introduction

### **Africa**

- Kenya 5
- Democratic Republic of Congo 7
- Sudan 10

### **Asia and Middle East**

- Burma/Myanmar 12
- China 13
- Cambodia 15
- Pakistan 17
- Occupied Palestinian Territories 19
- Syria 21

### **Americas**

- Colombia 26
- Guatemala 29

### **Eastern Europe**

- Russia 32

### **Thematic**

- Migrants Rights 36

Independent Expert is adamant to pursue the monitoring of ongoing violations and address recommendations to the DRC authorities and to the international community. **Thus FIDH calls on the Human Rights Council to prolong the mandate of the Independent Expert.**

## INTRODUCTION

On the occasion of the 7<sup>th</sup> session of UN Human Rights Council, the International Federation for Human Rights publishes its position paper on situations for which we expect the members of the Human Rights Council to act.

### *Situations on the Council's agenda, requiring a sustained attention of the Human Rights Council*

FIDH is concerned with the current repressive climate and systematic human rights violation in **Burma/Myanmar**. The Special Rapporteur on human rights on Burma/Myanmar has not been allowed to conduct a second visit before this session of the Human Rights Council. This constitutes a blatant lack of cooperation with the UN mechanisms and a blow to the Human Rights Council's special session. **FIDH therefore calls on the Council to express support for a genuine process of national reconciliation by releasing Aung San Suu Kyi.**

Taking note of the latest report of the Special Rapporteur on the Situation of Human rights in the **Sudan**, FIDH expresses its deep concern about the human rights situation where arbitrary arrests and torture of civilians continue, and impunity fails to be challenged. **FIDH calls on the Council to condemn the repeated hurdles posed by the Sudanese government to fight against impunity of the crimes committed in Darfur.**

Following the special session on the human rights situation in Gaza in the **Occupied Palestinian Territories** (OPT), FIDH remains gravely concerned about escalating Israeli violations of international law and reiterates that any political settlement not based upon international human rights law and humanitarian law cannot lead to a peaceful and just solution of the Palestinian question.

Impunity continues in the **Democratic Republic of Congo** for grave human rights violations, in particular sexual violence, thus preventing the cycle of violence from turning onto lasting peace. Within such context the preservation of the mandate of the

### *Situations requiring the intervention of the HRC*

The human rights situation in **Kenya** requires an in depth analysis from the Council. The flawed presidential elections and subsequent violence, leading to thousands of IDPs is part of a cycle that has been repeated around each election. FIDH regrets that the Council did not convene a special session to address the situation. **FIDH now urges the Human Rights Council to study the findings of the OHCHR's Fact Finding Mission, and intervene to break the impunity of the instigators of the violence.**

The human rights situation in **Pakistan** has severely deteriorated in the months leading to the elections. Patterns of grave human rights violations have added to the political violence. Pakistan has one of the worst records of lack of cooperation with UN Special Procedures, with seven Special Procedures awaiting to visit the country. **FIDH therefore calls upon the Human Rights Council to urge Pakistan to free all prisoners of opinion, in particular the judges and lawyers still detained; and to address a standing invitation to the UN Special Procedures.**

FIDH would like to emphasize the critical situation of human rights in **China**. It remains impossible to defend human rights in the country. Journalists, lawyers, activists are arrested and sentenced to long prison detentions, simply for advocating human rights and democracy. The situation of economic and social rights in also appalling, in rural areas and increasingly in cities. The death penalty continues to be applied with a record of 80% of the world's executions. **FIDH calls on the Council to issue a resolution on the Human rights situation in China.**

FIDH remains deeply preoccupied with the grave human rights violations in **Russia**. Freedom of expression has suffered a severe decline, notably around the presidential elections. Human rights defenders are harassed, independent voices are targeted. The instigators of the murder of Anna Politkovskaïa remain unpunished. Racism and nationalism is flourishing, translating into acts of violence, without any adequate response from the authorities, or sometimes encouraged by the authorities' discourse. **FIDH calls on the Council to issue a**

**resolution on the human rights situation in the Russian Federation.**

The situation of pro-reform advocates, including human rights defenders in **Syria** has deteriorated over the past two years. In 2007, several human rights defenders were sentenced by the Damascus Criminal Court to heavy prison terms following unfair criminal proceedings. They remain in detention to this date. **The Council should condemn the blatant lack of freedoms in Syria.**

**Thematic Priorities**

***Human Rights Defenders***

The 7<sup>th</sup> session of the Council will consider the renewal of the mandate of the Special Representative on **Human Rights Defenders**. The present report documents ongoing threats and attacks against human rights defenders in some countries where there has been a significant degradation, as documented by the Observatory for the Protection of Human Rights Defenders, a joint FIDH-OMCT programme. The situation reports this particularly in **China, Syria, Colombia, Guatemala, Cambodia Russia and Zimbabwe**. **Considering the increasing amount of violations against human rights defenders, FIDH urges the Council to renew and maintain the mandate in the current terms.**

***Migrants' rights***

FIDH is preoccupied by the violations of rights of migrants, in particular, the strong vulnerability of undocumented migrants. The conditions of their interception, detention and deportation is subject to criticism, notably in Mexico, the USA, and South Africa, where FIDH conducted missions recently. Legislative developments with a view to harmonizing the conditions of “return” of undocumented migrants in the EU also raise concern.

## **AFRICA**

### **1. Kenya**

The International Federation for Human Rights (FIDH) and its member organisation, the Kenya Human Rights Commission (KHRC) are very concerned by the human rights situation in Kenya since the presidential election of 27 December 2007 and request the UN Human Rights Council to adopt a resolution on the situation.

#### ***Electoral irregularities on the occasion of the presidential ballot of 27 December 2007***

Although high voter turn out characterised the general elections on the polling day, which was generally peaceful and without any gross irregularities, subsequent events in counting and tallying the presidential poll that led to swearing-in of Mwai Kibaki on 30th October 2007 was heavily flawed and devoid of credibility. After two days of controversy over the tally, the executive arm of government usurped the role of the Electoral Commission of Kenya (ECK). Paramilitary troops (the General Service Police Unit- GSU) invaded the tallying centre, escorted the Chairman of the ECK out of the hall and proceeded to disperse the contestants, observers, agents and the media. Subsequently the ECK Chairman announced a result that was not backed by the required statutory documentation and shortly thereafter, Mwai Kibaki was sworn in as President in a private and evidently pre-arranged ceremony. Domestic and international observers have since tabled evidence of irregularities and fraud.<sup>1</sup> Since then, the Chairman and Commissioners of the ECK have also cast aspersions on the integrity of the results.

---

<sup>1</sup> See Commonwealth Secretariat, Kenya General Election, The Report of the Commonwealth Observer Group (London, January 2008) available at [www.thecommonwealth.org](http://www.thecommonwealth.org), EAC Secretariat, The East African Community Observer Mission Report Kenya General Elections December 2007 (Arusha, January 2008)(on file with the KHRC), European Union Election Observation Mission, Doubts about the Credibility of the Presidential Results Hamper Kenya's Democratic Progress: Preliminary Statement (Nairobi, January 2008), available at [www.eucomkenya.org/Main/English/Default.html](http://www.eucomkenya.org/Main/English/Default.html), and Kenya Human Rights Commission, Violating the Vote (Nairobi, February 2008) available at [www.khrc.or.ke](http://www.khrc.or.ke).

### ***Violence and Human Rights Violations***

The subversion of democracy in the presidential election has triggered serious political and civil strife in Kenya. Following these events, Kenya has witnessed a wave of violence and serious human rights violations. The types of violence and human rights violations are as follows:

- Spontaneous, disorganised uprisings of mobs protesting the flaws in the presidential elections. These mobs looted, raped and burnt down buildings in an anarchical manner.
- Organized violence by militia in the Rift Valley that was aimed at perceived political opponents. The initial militia action attracted retributive, largely organized counter-violence especially in Nakuru, Naivasha areas of the Rift Valley, and Nairobi. Certain members of ethnic groups committed atrocities against innocent individuals (mainly the Kikuyus, Mwai Kibaki's ethnic group) for their perceived support of Mwai Kibaki during the election. Some members of the Kikuyu community engaged in acts of revenge.
- Disproportionate and excessive use of force by the police against unarmed protesters mainly in opposition strongholds including Kisumu, Kakamega, Migori, and the low income settlements of Nairobi. Policing has been uneven in its implementation. In some strong opposition areas, the police have been shooting to kill, while when confronted with some militia, they have opted to negotiate with the groups. However, in the Eldoret area, the police were bystanders as perceived opponents of the opposition were killed and their houses burnt.
- Local militia in pro-government areas, on receiving internally displaced persons (IDPs) from the Rift Valley, have mobilized in sympathy and turned on perceived opposition supporters, killing them, and burning their houses.
- Death threats, intimidation and harassment of human rights defenders

The violence has so far claimed over 1000 lives and displaced over 300,000 Kenyans, some across the Kenyan borders, and some displaced for the second time.<sup>2</sup> According to the African Union (AU) mediator,

---

<sup>2</sup> Kenya has had a history of internal displacement, the most recent being between 1992 and 1997. During that period, more than 250,000 people were internally

Kofi Annan, Kenya faces «*gross and systematic human rights abuses*». And, the United Nations Special Adviser on the Prevention of Genocide, Francis Deng, called for «*an immediate halt to the destructive cycle of attacks and revenge attacks in Kenya, where post-electoral violence continues to claim lives*»<sup>3</sup>. At the occasion of its 10<sup>th</sup> Summit, the African Union took a decision on the situation in Kenya strongly «*deploring the loss of lives*» and «*condemning the gross violations of human rights that occurred in the past weeks*»<sup>4</sup>.

#### ***A strong need to end the cycle of violence in Kenya***

The crisis has since mutated from protest over the flawed presidential election, but also deeper issues among them historical injustices and wrongs<sup>5</sup>, inequality (income and geographic), dispossession and corruption. The FIDH, KHRC and KPTJ consider these forms of violence to be avenues for serious human rights violations, hence the need for their immediate cessation. While supporting peaceful resolution of the Kenyan situation, the FIDH, KHRC and KPTJ consider that sustainable peace should be founded on truth, justice, the respect for human rights and the democratic will of the Kenyan people. Further, the solution to the Kenyan situation must aim at preventing any possible future cycles of violence and human rights violations.

***FIDH and KHR regret that the UN Human Rights Council members did not convene a special session on the situation in Kenya in conformity with its mandate. We note the decision of the UN High Commissioner on Human Rights to send a Fact-***

***Finding Mission in Kenya and her statement that "[t]ruth and accountability are of critical importance in putting an end to the violence and preventing future human rights violations [in Kenya];"***

**We thus recommend the Human Rights Council Members to adopt a resolution on the human rights situation in Kenya, based on the findings and recommendations of the OHCHR Fact-Finding Mission's report, notably to**

- **condemn the serious violations of the provisions of International Human Rights Instruments committed after the 27 December 2007 presidential elections;**
- **denounce the electoral irregularities that were committed at the occasion of the presidential ballot of 27 December 2007, in blatant violation of international human rights instruments;**

**and to request Kenyan authorities to:**

- **ensure unobstructed investigations on the alleged breach of the Presidential and National Assembly Elections Act and the Constitution of Kenya by the Electoral Commission of Kenya;**
- **ensure the protection of human rights defenders and civilians in general;**
- **take all necessary measures to ensure an end to impunity and a return to democratic governance, respect for human rights and just peace in the country;**
- **ensure that all individuals responsible for directly inciting ethnic violence are investigated and prosecuted;**
- **ensure that all members of security forces responsible for disproportionate use of force and repression of peaceful demonstrators and other individuals are investigated and prosecuted;**
- **ensure the opening of investigations against militia members responsible for human rights violations;**
- **ensure unobstructed investigations on the murder of two opposition Members of Parliament and death threats pronounced against human rights defenders in Kenya;**
- **take all the necessary measures to ensure respect for the United Nations (UN) Guiding Principles on Internal Displacement;**

displaced, most of whom have not returned to their farms and homes. See FIDH and KHRC «*Massive Internal Displacements due to Politically Instigated Ethnic Clashes*, » FIDH Report n°471/2, available at <http://www.fidh.org/spip.php?article4259>.

<sup>3</sup> See UN Center News Press Release, 28 January 2008 : UN genocide adviser urges end to violence in Kenya, sends staffer there <http://www.un.org/apps/news/story.asp?NewsID=25425&Cr=kenya&Cr1=>

<sup>4</sup> Cf, Decisions and Declaration of the 9<sup>th</sup> ordinary session of the Conference. <http://www.africa-union.org/root/ua/index/index.htm>

<sup>5</sup> During past multi-party elections with the exception of 2002, political violence has been a common occurrence. In 1992 and 1997, violence prior to and after elections was largely attributed to the then ruling party, KANU, whose officials organised, fuelled, or otherwise supported violence aimed at suppressing supporters of the opposition. See FIDH and KHRC «*Massive Internal Displacements due to Politically Instigated Ethnic Clashes*, » FIDH Report n°471/2, available at <http://www.fidh.org/spip.php?article4259>.

- establish transitional justice mechanisms to address the underlying causes of the violence and provide justice relating to immediate and historical wrongs in Kenya; and
- more generally, to take all necessary measures to settle the root causes of the crisis in Kenya, notably the issue of land, inequality and poverty, and to guarantee justice, respect for human rights and return to democratic governance.

## 2. The Democratic Republic of Congo

### *Reprise des affrontements à l'Est du pays*

Depuis 2006, les combats ont repris à l'Est du pays, principalement au Nord Kivu. Les Forces armées de la RDC appuyées par des milices mai mai ont affronté pendant plusieurs mois les éléments rebelles de Laurent Nkunda. Malgré la signature entre les parties en conflit, le 23 janvier 2008, d'un Acte d'engagement prévoyant entre autres l'arrêt total et immédiat des hostilités et la cessation des violences envers les populations civiles et plus particulièrement les femmes, des affrontements armés ont depuis été signalés à l'Est du Congo. Le 11 février 2008, la Mission des Nations unies en RDC (MONUC), responsable de la surveillance de la mise en oeuvre de l'Accord, a annoncé plus de dix-sept accrochages entre les parties signataires, en violation flagrante du cessez-le-feu. Ces accrochages ont été pour la plupart, enregistrés dans les localités de Ngungu, Mweto et Kingi (territoire de Masisi), par les Maï-Maï et les rebelles de Laurent Nkunda.

Par ailleurs, les affrontements entre l'armée et les rebelles continuent dans d'autres parties du pays. Ainsi le 29 janvier 2008 des combats ont eu lieu entre les Forces Armées de la RDC et des éléments du Front Patriotique de Résistance en Ituri (Ituri), forçant le déplacement de nombreux civils fuyant les combats.

Ces différents conflits sont menés en violation du droit international humanitaire, notamment par une utilisation fréquente d'enfants soldats. Ils plongent une nouvelle fois la société civile dans une grande insécurité. Certains sont tués pendant les combats. Presque tous sont pillés et assistent sans défense à l'incendie de leurs habitations. Les auteurs de ces exactions jouissent d'une totale impunité. Plusieurs centaines de milliers de congolais ont été obligés de fuir leur domicile pour se rendre dans des sites de déplacés où la difficulté d'accès aux biens de premières nécessité entraîne une véritable crise humanitaire.

### *Le viol, une arme de guerre et une pratique banalisée, en toute impunité*

La FIDH, et ses organisations membres, le Groupe Lotus, la Ligue des Electeurs (LE), et l'Association africaine des droits de l'Homme (ASADHO) sont par ailleurs particulièrement préoccupées par la pratique massive du viol en RDC. Au plus fort des conflits, le viol est devenu une véritable arme de guerre. Dans les moments de relative stabilité, les violences sexuelles comme les viols sont plutôt commis dans le

prolongement de pillages. Des bébés de six mois, des femmes de 70 ans, des hommes n'échappent pas à la terreur.

Les auteurs de ces viols, miliciens, insurgés, rebelles, mais également des membres de l'armée congolaise, jouissent d'une impunité quasi-absolue. Du fait de cette culture d'impunité, les violences sexuelles se sont banalisées et se développent dans le reste du pays, y compris dans la capitale, Kinshasa. Selon la Rapporteuse spéciale sur les violences contre les femmes<sup>6</sup> les allégations de viol de la part de membres des FARDC et de la Police nationale congolaise sont de plus en plus nombreuses. Malgré les deux lois de juillet 2006 sur la pénalisation des violences sexuelles, parmi les victimes qui osent dénoncer ces crimes, seule une proportion infime parvient à obtenir la condamnation des responsables.

Selon le Rapport du Secrétaire général des Nations unies sur la situation en RDC présenté en mars 2007 au Conseil de sécurité : « *Le secteur de la justice manque cruellement de capacités opérationnelles. Il n'a jamais été indépendant et n'a jamais disposé des moyens nécessaires pour poursuivre les auteurs d'infractions et faire appliquer les décisions des tribunaux* ». Ce manque d'indépendance a été caractérisé par les ordonnances prises par le Président de la République le 9 février 2008 portant mise en retraite des magistrats de la Cour Suprême de Justice, du Parquet Général de la République et démission volontaire des magistrats sans consultation préalable du Conseil supérieur de la magistrature, pourtant prévue par la loi.

Plaidoyer pour l'instauration de chambres mixtes compétentes pour juger les auteurs des crimes les plus graves

Face à ce manque d'indépendance de la justice congolaise et à l'impunité quasi totale des auteurs des crimes les plus graves en RDC, nos organisations appellent le Conseil des droits de l'Homme à demander au Conseil de sécurité des Nations unies et au Gouvernement congolais l'instauration de chambres mixtes composées de magistrats nationaux et internationaux, compétents pour connaître des crimes les plus graves (crimes de guerre, crimes contre l'humanité, crimes de génocide, et crimes sexuels) perpétrés depuis 1996. Cet appel vous a déjà été lancé par l'expert indépendant sur la situation en RDC dans le rapport qui vous a été présenté en septembre 2007 et lors de sa dernière visite en RDC

<sup>6</sup> Communiqué de presse, *UN expert on violence against women expresses serious concerns following visit to DRC*, 30 juillet 2007

en décembre 2007.

### ***Danger pour les défenseurs des droits de l'Homme***

Par ailleurs, nos organisations souhaitent vous informer de la persistance des menaces et harcèlements contre les défenseurs des droits de l'Homme dans ce pays. Ainsi, pour avoir dénoncé la dépendance de la justice en RDC, un des dirigeants de Justice Plus a du récemment quitter le pays. Dismas Kitenge, président du Groupe Lotus, et vice-président de la FIDH, basé à Kisangani, a été attaqué par un groupe d'étudiants suite à ses déclarations aux médias appelant à des négociations de paix entre le gouvernement et les rebelles de Nkunda. Les étudiants l'accusaient de soutenir le général Laurent Nkunda et d'être ainsi un traître à la nation. Floribert Chebeya de la Voix des sans voix, a été harcelé et est recherché par la justice suite à ses dénonciations sur l'assassinat de Mme Aimée Kabila en janvier dernier. Des ONG dont Journalistes en Danger (JED) ont reçu des menaces pour avoir dénoncé les dysfonctionnements de la justice militaire dans le cadre de l'enquête sur l'affaire Serge Maheshe, un journaliste de la radio Okapi, parrainée par l'ONU, abattu le 13 juin 2007. Les commanditaires de cet assassinat ne sont d'ailleurs toujours pas connus.

Renouvellement de l'expert indépendant sur la situation des droits de l'Homme en RDC et du Rapporteur spécial sur les violences contre les femmes

Ainsi, compte tenu des graves violations des droits de l'Homme perpétrées en RDC et de l'importance pour le Conseil des droits de l'Homme d'être tenu régulièrement informé de la situation pour agir dans le but de prévenir d'autres violations et de contribuer ainsi à la paix et la restauration de l'Etat de droit dans ce pays, nos organisations vous demandent de renouveler le mandat de l'expert indépendant sur la situation en RDC. Par ailleurs, la RDC est un triste exemple de l'importance que revêt pour votre institution de sauvegarder le mandat du Rapporteur spécial sur les violences contre les femmes.

**Ainsi nos organisations recommandent au Conseil des droits des Nations unies de renouveler le mandat de l'Expert indépendant sur la situation des droits de l'Homme en RDC et d'adopter une résolution pour**

- **condamner les graves violations des droits de l'Homme et du droit international humanitaire perpétrées par des éléments des FARDC, de la**



- **police et des différents mouvements armés ;**
  - **condamner de manière spécifique la pratique massive des viols et crimes sexuels dans le pays ;**
  - **Exiger des parties signataires le strict respect de l'Accord d'engagement conclu le 23 janvier 2008 à l'issue de la conférence de Goma ;**
  - **Rappeler l'impérieuse nécessité de lutter contre l'impunité des auteurs des crimes les plus graves, comme base d'une paix durable fondée sur l'Etat de droit ;**
  - **Demander à cet effet au Conseil de sécurité des Nations unies d'instaurer en RDC des chambres mixtes, composées de magistrats nationaux et internationaux, compétentes pour connaître des crimes les plus graves, notamment les crimes de génocide, crimes de guerre, crimes contre l'humanité et crimes sexuels ;**
  - **Condamner les violations des droits des défenseurs des droits de l'Homme ;**
- crimes de génocide, crimes de guerre, crimes contre l'humanité et crimes sexuels ;**
- **respecter la Déclaration sur les défenseurs adoptée en 1998 par l'Assemblée générale des Nations Unies.**

**et pour recommander aux autorités congolaises de**

- **mettre tout en oeuvre pour assurer le brassage des groupes armés au sein de l'armée nationale ;**
- **prendre toutes les mesures nécessaires pour faire appliquer les lois sur les violences sexuelles;**
- **respecter scrupuleusement le principe l'indépendance de la justice et ainsi d'annuler les ordonnances relatives à la mise en retraite et à la nomination de magistrats**
- **ratifier le Protocole additionnel à la Convention pour l'élimination de toute forme de discrimination à l'égard des femmes et les Protocoles à la Charte africaine des droits de l'Homme et des peuples relatives aux droits des femmes et à la mise en place de la Cour africaine des droits de l'Homme et des peuples**
- **respecter la Résolution 1325 du Conseil de sécurité sur les droits des femmes;**
- **soutenir la mise en place de chambres mixtes composées de magistrats nationaux et internationaux, compétentes pour connaître des crimes les plus graves, notamment les**

### **3. Sudan**

Taking note of the latest report of the Special Rapporteur on the Situation of Human Rights in the Sudan, the International Federation for Human Rights (FIDH) and its partner organisation the Sudan Organisation Against Torture (SOAT) express their deep concern about the human rights situation in Sudan and urge the Human Rights Council to pledge full ongoing support for the Special Rapporteur's mandate.

The human rights situation in Darfur in particular remains dire. A major offensive by government forces and allied militias on three towns in West Darfur in February caused massive new displacement, with UN officials counting some 12,000 fleeing across the border into Chad alone. Militias, with support from government aircraft, are reported to have looted and burned homes and killed residents. Across Darfur, the security situation is extremely poor and a total of over 2.3 million displaced persons remain vulnerable to abuses including arbitrary arrest, torture, rape, murder and forcible relocation.

Human rights violations in Sudan are by no means limited to Darfur. The Sudanese authorities continue to imprison individuals without charge for long periods of time, with detainees often denied access to lawyers and tortured in custody. Recent examples include the case of Amar Nagmeldin Guluk, a spokesperson for the Khartoum State branch of the Sudan People's Liberation Army who was held without charge for over six weeks following his arrest in November, and the case of dozens of individuals arrested last July amid allegations of a coup plot. Most members of the latter group were held until the end of December and several reported suffering torture, including being beaten with pipes. FIDH and SOAT are further concerned about a number of foreign nationals detained without charge in Sudan and who face the possibility of forcible repatriation to countries where they would be at risk of torture and/or persecution.

In recent weeks, the authorities also appear to have engaged in a concerted effort to further reduce the (already very limited) scope for freedom of expression in Sudan. Since early February, most major newspapers have received daily visits by officers of the National Security Service to check the contents of each edition before publication. These security officers have demanded the removal of articles about recent developments in Darfur and neighbouring Chad, along with others referring to

comments made by the Dutch foreign minister during his latest visit to Sudan about the country's dealings with the International Criminal Court. On 14 February allegations in Rai al-Shaab about Sudan's role in the fighting in Chad led to an entire edition of the newspaper being blocked. In addition, security chief Salah Gosh has recently accused numerous unnamed journalists of being paid by foreign embassies and has announced that investigations are underway. When one columnist wrote a piece referring to Gosh's accusation, security officers ordered al-Sahafa newspaper to excise the entire article.

The kinds of abuses described thus far are facilitated by the existence of numerous pieces of legislation yet to be brought into line with Sudan's Interim National Constitution. This unreformed legislation grants sweeping powers to organs like the NSS and helps to underpin the impunity of officials responsible for human rights violations. Impunity is a particular problem in Darfur, where the authorities have still taken no serious steps to bring to justice those suspected of responsibility for abuses on a massive scale over a period of five years. In the cases of Musa Hilal and Ahmed Harun, these individuals have instead been granted senior government posts.

Sudan is reaching a decisive stage in its history. According to the Comprehensive Peace Agreement (CPA) that brought an end to the decades-long civil war in the South in 2005, a national census and elections are due to take place this year and next which should mark milestones in its transition towards stability and democracy. But a lack of respect for human rights enshrined both in international law and in the Sudanese constitution represent a major obstacle to this transition. In this context, it is crucial that the valuable contribution made by the Special Rapporteur, including the vital task of following up on the work of the Group of Experts on Darfur, should continue to receive the full support of the Council.

#### **FIDH and SOAT call on the Human Rights Council to:**

- **Ensure that the Special Rapporteur is provided with the human and financial resources necessary to carry out the mandate, including following up on the work of the Group of Experts**

#### **Call on the Government of Sudan to:**

- **Continue cooperating with the Special**

**Rapporteur's mandate;**

- Take all necessary measures to end instances of arbitrary detention, torture in custody and limits on detainees' access to legal advice, in conformity with the International Covenant on Civil and Political Rights;**
- Take all necessary measures to end restrictions on the media, in conformity with the International Covenant on Civil and Political Rights;**
- Expedite reforms to bring the Sudanese justice system and all legislation in line with the Interim National Constitution and international human rights standards, and to end the impunity of state officials;**
- Allow a mission by the Special Rapporteur to Sudan and Darfur dedicated to following up on the work of the Group of Experts, with the Special Rapporteur granted full discretion over the modalities and composition of the mission;**
- Cooperate with the international community to resolve the crisis in Darfur, including by: respecting ceasefire agreements; ensuring accountability for crimes perpetrated in the region, notably through a full cooperation with the International Criminal Court; and ceasing obstruction of the United Nations-African Union Mission in Darfur and facilitating swift deployment of personnel and equipment associated with the force.**

## ASIA

### 1. Burma/Myanmar

At the beginning of February 2008, the Burmese military junta announced that a constitutional referendum will be held in May, to be followed by elections in 2010. On 19 February 2008, the junta announced that the draft text of the Constitution had been completed, but it has not been made public yet.

FIDH consider this move as mere window-dressing to appease the international community and to actually perpetuate the military dictatorship.

The Junta, ignoring the results of 1990's election, has pursued since 1993 a National Convention in charge of drafting a new Constitution for the country. Any criticism against the drafting process was considered a criminal offence. The National League for Democracy (NLD) has been excluded from participation and the process has been unanimously criticized as undemocratic, non-participative and opaque. After the National Convention ended its work, the drafting process was left to a body composed of 54 members selected by the junta, the Constitution Drafting Commission.

According to Supreme Court Chief Justice and Chairman of the Constitution Drafting Commission, Aung Toe, the draft was drawn up with the objective of ensuring a leading role in politics for the military; this means that the military will maintain a strong influence in any future civilian government. Another clause reportedly bars candidates married to foreigners from standing for election, which *de facto* excludes Aung San Suu Kyi from the electoral process.

The mere fact that the draft was elaborated behind closed doors by persons appointed by the junta deprives the process and the resulting draft from any credibility. A Constitution can only be the fruit of an open and participatory process, inclusive of opposition political parties, and in particular the main one, the NLD, as well as representatives of ethnic minorities. Such a process must entail the possibility of an informed public debate on issues that are crucial for the future of Burma. The current extremely repressive climate and the persistence of serious and systematic human rights violations in the country are definitely obstacles to such a genuine process.

The recent arrest, on February 15, 2008, of two journalists, Thet Zin and Sein Win Aung of *Myanmar*

*Nation* magazine at their office in Rangoon, demonstrates once more the total denial of freedom of expression in Burma. As recently as on 5 February 2008, the UN Special Rapporteur on human rights in Burma/Myanmar, Paulo Sérgio Pinheiro, stated that “political and human rights activists continue to be arrested, detained and sentenced to prison terms under the security laws”.

In addition, at the time of the publication of this report, the Special Rapporteur on human rights on Burma/Myanmar had not been allowed to conduct a second visit before the March session of the Human Rights Council. This constitutes a blatant lack of cooperation with the UN mechanisms and a blow to the Human Rights Council's special session.

**FIDH consequently calls upon the Human Rights Council to, *inter alia*,**

- **urge the government of Burma/Myanmar to create conditions for dialogue and reconciliation by putting an immediate end to the house arrest of Aung San Suu Kyi and by releasing all political prisoners.**
- **express support for a genuine process of national reconciliation and request from the Government of Burma/Myanmar to accept permanent offices in Rangoon for the UNSG Special Envoy's good offices mission and for the High Commissioner for Human Rights and to effectively engage in a constructive and sustainable dialogue with the Human Rights Council and its special procedures. In particular, Mr. Pinheiro should be able to visit the country as often as is required for the effective fulfilment of his mandate**
- **call upon the UN Security Council to adopt a resolution imposing effective, multilateral sanctions targeting in particular, the oil and gas sectors, timber, gems and financial services, including banking.<sup>7</sup>**

<sup>7</sup> As reported by FIDH in its numerous reports on Burma, economic sanctions in the above mentioned sectors would impact on the military regime and crony elites, not the people, who mainly live of agriculture and the informal economy. They stress the links between foreign direct investment and repression.

## 2. People's Republic of China

Five months before the opening ceremony of the Olympic Games in Beijing, the International Federation of Human Right (FIDH) and Human Right in China (HRIC) would like to emphasize the critical situation of human rights in China.

Despite arguments that the human rights record of the Chinese government has improved, the death penalty continues to be applied with more frequency than in any other country; foreign and domestic journalists face police harassment; and human rights defenders are arbitrarily detained and arrested. In addition, a recent FIDH fact-finding mission revealed that urban development has led to the forcible eviction of thousands of people from their homes and businesses, all so that the authorities can show China's "new face" to the world. This is only to mention a few.

A member of the 2008 China Olympic Games Collective, a coalition of nine French non-governmental organizations, which presents eight demands that can be immediately be implemented by the Chinese authorities, FIDH continues to be concerned about the absence of progress. None of these demands have been met with any response from the Chinese government. HRIC's Take Action Olympics Campaign highlights individuals in detention and systemic human rights challenges, and calls on the Chinese government to release individuals in detention who have been determined by the UN Working Group on Arbitrary Detention to be in detention arbitrarily. These include five individuals featured by the campaign, Chen Guangcheng, Shi Tao, Yao Fuxin, Hu Shigen, and Li Chang.

### **Arbitrary Detention: Re-Education Through Labour**

Despite the fact that administrative detention procedures do not reflect values expressed in the Chinese Constitution, "Re-Education Through Labour" (RTL), a system outside the Criminal Law, continues to be used to punish minor offences and is often imposed on human rights defenders. There are concerns that the RTL system will continue to be used during the Olympics as the government seems ready to make every effort to ensure security, and silence any protest, in the host city. It should be kept in mind that persons detained in RTL centres have often been subjected to torture and ill-treatment. Furthermore, the fairness and legality of the RTL

system has been called into question. As some experts and academics have observed,<sup>8</sup> there are four arguments for repealing the RTL system: *First*, it creates a deprivation of freedom imposed by an administrative committee, without any legal trial, and implemented by the police; *Second*, no provisions in the Chinese Criminal Law reference RTL. As a consequence, RTL detainees cannot receive sentence reductions whereas criminal detainees can. *Third*, RTL is not compatible with the International Convention on Civil and Political Rights signed by China in 1998. The Convention states that only fair trials can impose deprivations of freedom. As a signatory to the Convention, China is required not to defeat its object and purpose. *Finally*, the RTL system violates the principle of equal treatment for persons criminally detained and those administratively sanctioned.

### **No Justice for Tournament**

Nineteen years after the crackdown on the 1989 Tiananmen Square demonstrations, an unknown number of individuals detained at that time reportedly remain in prison. Demonstrators, including workers and students, were convicted for "rioting" and "counter-revolutionary activities." Even individuals outside of prison who have called for a reassessment of the demonstrations have been harassed. For example, members of the "Tiananmen Mothers" face periods of house arrest after attempting to commemorate the events. The "Tiananmen Mothers" have called for the opening of a criminal investigation for the events in Tiananmen in order to evaluate the responsibility for the crackdown and seek justice for the victims. In addition, thousands of prisoners of conscience, but also ordinary lawyers, journalists, internet users, and human rights defenders have been detained and are held in prisons or RTL centres. Associated with the China 2008 Olympic Games Collective, FIDH is involved in a campaign which aims at presenting one prisoner of conscience a week from 9 November 2007 to 8 August 2008 (opening day of the Olympics), calling for his or her release. The 40 featured prisoners are used to evaluate China's will to keep its promises and improve their human rights situation.

### **Lack of Freedom of Expression**

The control of the media, including the internet, violates the right to freedom of expression and information. The Departments of Propaganda and

<sup>8</sup> On the occasion of the law national day, on December 4th 2007, 69 experts and academics addressed to the Popular National Assembly a "citizen recommendation" asking for the "re-education through labour" system constitutionality to be examined.

Public Security, and so-called “cyber police” are instructed to censor all subjects of a sensitive nature. No clear definition for what subjects are sensitive exists, such that censorship is often arbitrary and capricious. At least 30 journalists and 50 internet users, convicted for leaking state secrets, inciting subversion, or libel, are currently in jail, some of them since the 1980s. Moreover, it is still impossible for the international media to employ Chinese journalists, or to move around freely in Tibet and Xinjiang.

### ***Continued Use of the Death Penalty***

Abolition of death penalty also remains a priority. Each year, China holds the world record for the number of executions carried out, including those concerning non-violent crimes. The Dui Hua organization estimates that in 2006, 7,500 persons were executed. Despite recent reforms aimed at limiting the use of the death penalty (which came into effect on January 1st 2007, putting authority for reviewing and approving all death sentences back into the hands of the Supreme People’s Court), the high number of crimes punishable by the death penalty remains of serious concern. There are approximately 68 offences in the Criminal Law and other documents for which the death penalty can be imposed, including non-violent offences such as corruption. We also have to keep in mind that the death sentence is often pronounced at the end of unfair trials.

### ***Widespread Use of Torture***

The use of torture by police organs to seek confessions remains widespread in China. Rules of evidence, but also other factors such as excessively long periods of police custody, the absence of the presumption of innocence, and limited access to a defence lawyer, contributes to the perpetuation of illegal interrogation methods. From physical to psychological means, the list of methods of torture used is astonishing.

### ***Lack of Freedom of Association***

While the economic reforms implemented over the last 25 years have resulted in new inequalities and social tensions, the All-China Federation of Trade Unions (ACFTU) remains the sole organisation authorised by the government to defend workers’ interests. Freedom of association and the right to collective bargaining for independent trade unions still is not recognized. More than ever, in the current context of rapid privatisation and massive lay-offs, workers’ fundamental rights must be independently

defended. However, the Chinese government has consistently held that all unions be organized under the ACFTU.

### ***Harassment of Lawyers***

There can be no free and fair trials until the right to access defence counsel and the independence of judges and lawyers are ensured. Lawyers who defend major or sensitive cases are considered to have a dangerous profession in China today, in part because they face harassment, and are also constrained by law. Article 306 of the 1997 Criminal Law states that lawyers can be held criminally liable for forging evidence or giving false testimony. In some cases, this has meant that lawyers are charged where they use any testimony that contradicts the prosecutor’s arguments. Between 1997 and 2002, more than 500 lawyers were charged under Article 306.

### ***Illegal Evictions***

Ongoing and commonplace evictions from homes and land lead to violations of the right to property. Preparation for the Olympics in Beijing has escalated evictions there. The brutal way citizens are often evicted and the lack of adequate compensation has led to violent scenes that have been severely repressed, as human rights defenders often are. Evictions also take place in the countryside, responding to the need for space to implement development projects and industrial plants.

In April 2001, the representative of the Beijing Olympic Organizing Committee affirmed that awarding the event to China would “contribute to the development of human rights.” Yet, today, the concerns regarding human rights trends in China remain alarming. The run-up to the Olympics is a crucial period for holding the Chinese authorities to their word.

**Thus, FIDH, along with Human Rights in China, call upon the Human Rights Council to urge the Chinese government to:**

- free people imprisoned since the 1989 Tiananmen demonstrations, and all prisoners of conscience;
- end control of the media, including the internet;
- suspend all executions in china pending the abolition of the death penalty;
- abolish the practice of administrative detention;
- end the routine use of torture;
- allow freedom of association and the right to

**collective bargaining for trade unions;**

- **repeal article 306 of the penal code which exposes lawyers to repression;**
- **end the eviction of citizens from their homes and land**

**3. Cambodia**

The International Federation for Human Rights (FIDH) recalls that considerable progress remains to be made to strengthen the rule of law and respect for human rights in the Kingdom of Cambodia. Three trade union leaders have been murdered in the last three years. Human rights activists report that there have been fewer physical attacks against them and journalists over the last two years, but no fewer threats which has led to victims going into hiding abroad. Another critical issue is the lack of truly independent and powerful institutions in Cambodia, to counterweight the power of the executive. Key institutions, including the judiciary, the Constitutional Council and the Supreme Council of Magistracy, are heavily politicised and poorly functioning. Finally, a recent report of the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT), entitled « Defending Economic and Social Rights in Cambodia: a High-Risk Activity » highlights the crucial issue of land-grabbing and forced evictions as well as the persecution of community leaders, local activists and other human rights defenders active in the fight against evictions conducted illegally and often in extreme violence.

***Violence against trade unionists***

Mr. Chea Vichea, president of the Free Trade Union of Workers in the Kingdom of Cambodia (FTUWKC), was assassinated on the 22<sup>th</sup> of January 2004. Two men, Born Samnang and Sok Sam Oeung, accused of his murder, have been sentenced to 20 years of prison after a manifestly unfair trial in August 2005. The police and justice investigations on this case contained many irregularities. The police tortured Born Samnang in order to obtain his confession. A judge who had decided to drop the charges against them was taken off the case and the charges were reintroduced. The trial of the two men has been led in violation of both Cambodian law and international criteria for a fair trial. In April 2007, the court of appeal upheld the guilty verdict even though the prosecutor admitted that the evidence against them was insufficient. Chea Vichea's family has expressed its conviction that the two men are not guilty. This was also expressed by Var Sothy, the principal testimony of the case, who has now fled the country, scared for her life. The Cambodian government should lead an impartial and complete investigation on this murder and should also investigate the way Born Samnang and Sok Sam Oeung were

incriminated (allegations of police violence, intimidation of testimonies, political interferences in the judicial trial). Cambodian trade unionists are continually facing violence on their confronts. Hy Vuthy, administrator of the FTUWKC, and Ros Sovannarith, membre of the FTUWKC's direction committee have also been killed, respectively in February 2007 and in 2004; other members of the FTUWKC have been victims of physical agressions. Such a pattern of violence is extremely likely to have a chilling effect on the members and leaders of FTUWKC and other union activists throughout Cambodia. It has resulted in the stifling of trade union activities among workers. Prosecuting those responsible for the murders is the only way to give a clear signal to the perpetrators of acts of violence against trade unionists that such behaviour will not be tolerated in the future. The Cambodian government must put an end to the prevailing climate of impunity.

#### ***Attacks and lack of cooperation with UN officials***

FIDH is very concerned about the Cambodian government's ongoing unwillingness to engage with the UN Secretary General's Special Representative on Human Rights in Cambodia, Professor Yash Ghai. Following critical remarks by the Special Representative at the end of a 10-day fact-finding mission to Cambodia, Cambodian Prime Minister Hun Sen on December 12 called Prof. Ghai - a distinguished professor of constitutional law in Kenya who has been special representative since 2005, 'human rights tourist' and vowed to never meet him. Government officials charged that the UN envoy was trying to incite Cambodians to oppose the government and rejected Ghai's assessment of Cambodia's human rights situation as 'inaccurate' and overly negative. A Foreign Ministry spokesman told the press that government officials were unable to meet Ghai during his visit because they were 'busy trying to develop the country'. In the Ratanakiri province, armed soldiers and police attempted to disrupt a meeting between Ghai and indigenous villagers facing confiscation of their land, claiming that the Special Representative had no right to meet villagers because he had not received written permission from local authorities. Ghai's terms of reference authorize him to travel freely within Cambodia and to visit prisons without prior approval. 'When gun-toting soldiers threaten a UN official, one can only imagine how much more difficult it is for impoverished farmers in the countryside to assert their rights', said Eric Sottas, director of the Geneva-

based World Organization Against Torture.

#### ***Forced evictions of rural villagers and other vulnerable groupes from their land and the situation of activists dealing with forced eviction***

The recent report issued by the Observatory illustrates cases of grave human rights violations resulting from forced evictions including the April 2007 eviction of a community Sihanoukville's Mittapheap district and the June 2006 eviction of Sambok Chab in Phnom Penh. The report notes that communities affected by evictions are neither consulted nor informed well in advance. Compensation is largely insufficient, the resettlement areas are precarious and the humanitarian conditions of the affected populations are far from being human (resettlement sites, typically located in remote, undeveloped areas far from the city centre, rarely providing basic government services). Villagers opposing forced eviction are routinely targeted for unfounded criminal charges, while NGO's and journalists reporting on them are threatened. The deaths of some villagers are not properly investigated such as the death of a community activist from Sting Treng in July 2007 and the execution of the Prey Vihaer villagers who resisted an eviction in November 2007. In addition to community leaders and local activists, active against forced evictions, the report notes that other human rights defenders also face an unacceptably high degree of risk in their work. During the mission's visit to Cambodia, the team conducted numerous interviews that confirm how the rights to freedom of assembly and expression are being seriously violated in Cambodia despite its commitments towards the international community enshrined in the many human rights conventions ratified by Cambodia. Members of the ruling elites make use of instruments of the state for personal enrichment with deplorable consequences for the already marginalised populations. No strong institutions exist that could remedy the disastrous impact on economic and social rights of the massive and inequitable land 'redistribution process'. Challenges to expropriation are often met with intimidation, prosecution, imprisonment and violence. Furthermore, the judiciary is incapable or unwilling to protect residents against arbitrary evictions from their home or their land.

**The Observatory for the Protection of Human Rights Defenders (a joint programme of the International Federation for Human Rights/FIDH and the World Organisation Against Torture/OMCT), calls upon the Royal Government of Cambodia to :**



- adopt without any further delay the Fundamental Laws on the Organisation and Functioning of the Courts and the Law on the Statute of Judges as well as the anti-corruption Law.

- release immediately Mr. Sok Sam Oeun and Mr. Born Samnang, as their arbitrary detention follows a blatantly unfair trial, and ensure an independent inquiry into the assassination of Chea Vichea.

- put an end to impunity for acts of repression against community leaders, journalists and human rights defenders reporting on forced evictions or supporting evicted communities, as well as trade unionists.

- engage to a constructive dialogue with the UN Secretary-General's Special Representative on human rights in Cambodia, Professor Yash Ghai and thereby respect its international human rights commitments, regarding in particular its co-operation with the UN special mechanisms.

- take effective measures to combat the practice of forced evictions which constitutes a grave violation of the International Covenant on Economic, Social and Cultural Rights and other International human rights instruments that the Kingdom of Cambodia has ratified.

The Cambodian government should thereby:

- Establish an immediate moratorium on all involuntary evictions until the adoption and the proper and vigorous implementation of a strict legislative framework on evictions and resettlement as well as on land and housing rights.

- Ensure that all populations who have been forcibly relocated receive land titles for alternative land. The conditions of existing relocation sites should be immediately improved: communities should have access to medical treatment and health services and to education. They should also receive adequate compensation.

#### 4. Pakistan

##### *State of emergency and election*

On November 3<sup>rd</sup>, 2007, General Musharraf proclaimed a state of emergency in the country, invoking terrorist threats.

The emergency rule lasted until 15 December 2007. This period witnessed a grave setback for the situation of human rights in the country. In various provinces of the country, hundreds of opposition activists, lawyers, journalists, trade union leaders and human rights defenders were arrested, detained, tortured or put under house arrest. The majority of the detained were released after a limited period but many are still facing charges under the Maintenance of the Public Order Ordinance (POO) and sections 146, 147 and 148 of the Penal Code which treat rioting.

The Public Order Ordinance (POO) was adopted on November 10 amended the Pakistan Army Act (1952) and took effect retroactively from January 1<sup>st</sup>, 2003. The POO gave military courts the right to try civilians for a wide range of offences, punishable under various pieces of legislation, including the Prevention of Anti-National Activities Act (1974) and the Anti-Terrorism Act (1997) as well as the attempt to commit any of the said offences. This violates the fundamental principle of international human rights law stating that civilians always must be brought to trial in regular courts.

On the occasion of the recent election, on February 18, 2008, the EU Election observation mission indentified « problems with the framework and environment » of the election, including « public authorities favouring the former ruling parties, serious restrictions on the right to stand as a candidate, restrictions and pressure on the media, involvement by *Nazims* [local governors] in campaigning activity, and a complaints and appeals framework that fails to provide effective remedy. »

However, the secular opposition parties the Pakistan People Party (PPP) and the Pakistan Muslim League (PML-N) won the election. The people thereby showed its rejection of Musharraf's rule as well as its opposition to religious fundamentalism. In the North West Frontier Province, the governing religious Muttahida Majlis-e-Amal (MMA) was defeated and secular parties won the election. This development raises hope that a more consolidated democracy will emerge in the country.

##### *Attacks on the judiciary*

On March 9, 2007, in a blatant interference with the Judiciary, General Musharraf ordered the dismissal of

Supreme Court Chief Justice Chaudhry for alleged “misuse of office”. After refusing to resign, the Chief Justice was unilaterally suspended on allegations of misconduct, in violation of the principle of separation of powers. Following a strong national and international mobilisation, Chaudhry was reinstated as Chief Justice on July 20.

The declaration of emergency also led to significant attacks on the independence of the judiciary. The Supreme Court was about to rule on several hundreds of cases of enforced disappearances and had ordered the government and intelligence services to provide information on the missing people. In addition, the Supreme Court was in the final stage of a decision regarding General Musharraf's right to present his candidacy for a new presidential term.

Following the declaration of the state of emergency, five Supreme Court Justices and the Chief Justice refused to recognize the declaration, on grounds of its unconstitutionality. Many other judges of lower courts similarly refused to recognize the Presidential Order. They were subsequently put under house arrest, or arbitrarily detained. Musharraf replaced the arbitrarily fired judges with his own nominees.

Furthermore, dozens of lawyers were arrested, some of them were tortured while in detention or detained in unknown locations. An unknown number is still in detention.

### ***Enforced Disappearances***

The Human Rights Commission of Pakistan (HRCP) filed a petition before the Supreme Court against the enforced disappearance of 246 people (from the 600 cases that the HRCP had documented) reportedly by security/intelligence services and law enforcement agencies.

A large number of abducted citizens belong to either Nationalist parties, their student wings, post graduate students studying in various Universities particularly in Sindh and Baluchistan, members of various religious groups/parties (both Sunnis and Shias), working journalists of print and electronic media, scientists and even some of the members of the Armed Forces of Pakistan. Most alarmingly women family members along with minors also disappeared and a number of them were subsequently released after a terrifying investigation. The pattern of those who have disappeared shows that this illegal practice is systematic and tolerated, if not encouraged, by the Federal and Provincial Governments.

According to HRCP, those who disappeared but were subsequently released by the state agents have given

testimonies of their illegal abduction, prolonged isolation, incommunicado detention and physical and mental torture by law enforcement agencies and in particular by the security/secret services with the object of extracting confessions. They also indicated that they were not presented to a legal authority, were not informed of the charges against them and their place of detention was never disclosed. The forms of torture included deprivation of sleep, stripping the victim naked, severe beatings, use of electric shocks, hanging upside down on the walls and by the ceiling as well as inflicting injuries on vital body parts.

### ***Death Penalty in Pakistan***

In recent years, Pakistan has witnessed a significant increase in charges carrying capital punishment, in convictions to death, as well as in executions, in contradiction with the worldwide trend towards abolition, as witnessed by the adoption by the United Nations General Assembly, on December 18<sup>th</sup>, 2007, of a resolution calling for a global moratorium on the death penalty.

Pakistan's application of the death sentence falls far below international standards. Given the very serious defects of the law itself, of the administration of justice, of the police service, the chronic corruption and the cultural prejudices affecting women and religious minorities, capital punishment in Pakistan is discriminatory and unjust, and allows for a high probability of miscarriages of justice. At every step, from arrest to trial to execution, the safeguards against miscarriage of justice are weak or non-existent, and the possibility that innocents have been or will be executed remains frighteningly high.

While at the time of independence, only 2 charges carried a death penalty sentence, today, 27 different charges do so, including blasphemy, stripping a woman of her clothes in public and sabotage of the railway system. This goes far beyond the scope of the expression “*most serious crimes*” for which death penalty should be reserved under international law, and which is interpreted as meaning that death penalty should not be awarded for crimes beyond intentional crimes with lethal or other extremely grave consequences.

### ***Lack of cooperation with the UN Human rights procedures***

In addition to a very limited number of ratifications, Pakistan has one of the largest records of lack of cooperation with UN Special Procedures, in violations with its obligations as a member of the UN Human Rights Council. Seven Special Procedures have

requested to visit Pakistan, following repeated allegations of human right violations. None have obtained satisfaction since 1999.

**FIDH thus calls upon the Human Rights Council to urge Pakistan to, inter alia,**

- **Restore the independence of the Judiciary, and reinstate the judges that were sacked after the November 2007 State of Emergency;**
- **Free all prisoners of opinion, in particular the judges and lawyers still detained;**
- **Ensure preeminence of a civilian government on the Armed forces;**
- **Put an end to the practice of enforced disappearances and ratify the ICCPR and the UN Convention on Enforced disappearances;**
- **Adopt a moratorium on executions as a first step towards abolition; and, as an immediate measure, restrict the number of offences carrying the death sentence to the most serious crimes only;**
- **Fully respect freedom of expression and the right to freedom of information**
- **Address a standing invitation to the UN special procedures**

## **5. Occupied Palestinian Territories**

*"The food table in the Gaza Strip is now severely deficient because of the siege and closure....If this siege is maintained, then current malnutrition interventions and preventions will not be sufficient. Child morbidity and mortality will both increase [in Gaza]. We will not be able to cope."* Dr Adnan Al-Wahaidi, Medical Director of the Ard El Insan Child Nutrition Centre in Gaza city.

As human rights organisations committed to the promotion and protection of international human rights and humanitarian law, the Palestinian Centre for Human Rights (PCHR) and the International Federation for Human Rights (FIDH) remain gravely concerned about escalating Israeli violations of international law in the Occupied Palestinian Territory (OPT). These include violations of the rights to life, the right to freedom of movement, including freedom of movement in order to work, the right to access medical treatment, and the right to adequate food. These human rights violations are seriously affecting every aspect of civilian life in the OPT.

Regarding the situation in the Gaza Strip, PCHR and FIDH have repeatedly condemned the siege and closure of the Gaza Strip, as well as escalating Israeli military attacks which have killed 105 Palestinians in Gaza since the beginning of this year. Fifty six of the victims were civilians, including 8 women and 3 children. In addition, more than 250 Palestinians have been injured by Israeli military attacks in the Gaza Strip since the beginning of the year, including civilians who sustained life- long injuries. PCHR and FIDH condemn all attacks on civilians, and are gravely concerned that the Israeli military continue to use disproportionate force, and to launch extra-judicial execution operations in densely populated Gaza neighbourhoods, where it is impossible to distinguish between civilians and military targets.

On 7 February, 2008, at approximately 7.30 am, an Israeli surface-to-surface missile hit the Beit Hanoun Secondary Agricultural School in the northern Gaza Strip. An estimated 70 students and 35 school teachers and other staff were in the schoolyard at the time. One of the school teachers, forty-one year old Hani Sha'ban Na'im, was killed instantly. Two seventeen year old students were also critically injured in the attack. Attacks of this nature are a violation of international human rights law, including the (1949) Fourth Geneva Convention.

In addition to launching extra-judicial execution operations in the Gaza Strip without regard for the lives of Palestinians civilians, Israel is also subjecting the

people of Gaza to deprivations, imprisonment and collective punishment. Collective punishment of a civilian population is illegal under international human rights law and humanitarian law; however Israel has intensified its siege and closure of the Gaza Strip over the last eighteen months, especially since declaring the Gaza Strip "A Hostile entity" on September 19, 2007. As a direct result of the continuing siege and closure of the Gaza Strip, there are now chronic shortages of medicines, numerous commodities and certain foods, including vital fresh foods, and even fresh drinking water.

At Gaza's largest hospital, the Al-Shifa hospital in Gaza city, an increasing number of essential drugs are now totally unavailable. Out of an essential drug list of 480 items recommended by the World Health Organisation (WHO), the hospital is 90 items short. Of the 390 remaining items in stock, Al-Shifa has less than three months supply of 130 items. In addition to suffering chronic drug shortages, patients are also systematically being denied access to medical facilities outside of the Gaza Strip, even when this denial of access is life-threatening. PCHR has documented 26 patients from Gaza who have died as a direct result of being denied access via Erez Crossing to medical facilities in Israel, including six children.

Ten year old Shireen Abdallah Abu Shawareb recently died from a heart condition that could not be fully treated in the Gaza Strip. Shireen had been treated at the Rambam Medical Centre in Haifa, but in December 2007 she was denied a permit to leave the Gaza Strip a second time in order to resume treatment at Rambam medical centre. By the time the Israeli authorities had finally agreed to issue Shireen a permit, her health had seriously deteriorated. She died in Gaza on 15 January, 2008.

Access to appropriate medical facilities, like access to adequate food and fresh water, are basic human rights that are being denied to the 1.5 million citizens of the Gaza Strip. There are now severe shortages of fresh meat throughout Gaza. Meanwhile, fifty percent of Gaza households (around 750,000 people) are short of fresh drinking water on a daily basis, because there is not enough fuel to power their electric water pumps for more than 4-6 hours per day. There are daily power cuts across the Gaza Strip, affecting all sectors, including medical facilities. In addition, there are severe shortages of fuel for private cars. Between 1-15 February, Israel allowed an average of 7,570 litres of benzene to enter Gaza per day – this represents 4.6% of the daily needs of the people living in the Gaza Strip.

Ard El Insan is a Palestinian NGO that treats children under five years of age suffering from malnutrition. Last year Ard El Insan treated more than 8,400 malnourished children at its centre in Gaza city, plus another 8,000 children at its centre in the southern Gaza Strip. The Medical Director, Dr Adnan Al-Wahaidi, describes the consequences of the siege and closure of the Gaza Strip as "Very severe for babies and young children," especially with regard to child stunting due to prolonged exposure to malnutrition. According to the Palestinian Central Bureau of Statistics, 10.2% of children in the Gaza Strip are now suffering stunted growth due to chronic malnutrition. However, the World Food Program (WFP) is currently unable to provide 84,000 of its poorest beneficiaries with their full aid rations due to the continued siege and closure of Gaza. Dr Al-Wahaidi describes the current food table in the Gaza Strip as "Severely deficient because of the siege and closure."

In addition to denials of the rights to medication, appropriate medical facilities, food, fuel and water, Israel is also denying children in the Gaza Strip their right to education. There is now a severe shortage of paper in schools across the Gaza Strip. The second term of the school year started on 2 February, and the Ministry of Education in Gaza has informed PCHR that 1.5 million schoolbooks are still needed for Gaza's 450,000 school children, many of whom are now studying without text books due to the siege and closure.

Israel has not only allowed a humanitarian crisis to emerge in the Gaza Strip: it has manufactured a chronic humanitarian crisis in Gaza in defiance of international law, as a tool of collective punishment against the citizens of Gaza. PCHR and FIDH have repeatedly called on the International Community to honour their legal and moral obligations as High Contracting Parties to the Fourth Geneva Convention, in order to ensure Israel's respect for the Convention in the Occupied Palestinian Territory (OPT). In addition, PCHR and FIDH have reiterated that failure to act by the international community has encouraged Israel to act as if it is above the law, and encourages Israel to violate international human rights and humanitarian law.

Last year 491 Palestinians, including 296 civilians, were killed by the Israeli military in the OPT. Eighty four of them were killed in the West Bank, and 407 were killed in the Gaza Strip. Since the beginning of this year another 115 Palestinians have already been killed by the Israeli military; ten have been killed in the West Bank and 105 in the Gaza Strip. The human rights situation throughout the OPT remains critical.

PCHR and FIDH reiterate that any political settlement not based upon international human rights law and humanitarian law cannot lead to a peaceful and just solution of the Palestinian question. Rather, such an arrangement can only lead to further suffering and instability in the region. Any peace agreement or process must be based on respect for international law, including international human rights and humanitarian law in order to protect the lives and human rights of all Palestinian civilians.

## **6. Syria**

On his inaugural speech to the Syrian Parliament on 10 July 2000, Bashar al-Assad spoke of his desire to respect freedom of opinion, modernise the state and actively combat corruption. As a result, pro-reform activists were sufficiently confident to call for an end to the state of emergency and a return to the rule of law. With the change of power in 2000, the vitality of the civil society has been renewed: the number of organisations doubled between 2004 and 2007. On 16 October 2005, a wide coalition of political reform activists publicly issued the “Damascus Declaration for National Democratic Change,” which called for establishing a democratic system that respects citizens’ rights, ensures freedom of speech and association, and ends discrimination based on religious or political beliefs. In May 2006, a petition was signed by more than 300 intellectuals and human rights defenders from Syria and Lebanon, calling for the improvement of the relationships between the two countries.

However, arbitrary arrests soon resumed under the new regime. Recent arrests related to a pro-democracy declaration, the Damascus Declaration, saw the latest victims of this movement. Security is still used as a pretext to silence all forms of dissent. The state of emergency, imposed since the coup d'Etat of 8 March 1963 when the Baath party seized power, remains in force, allegedly to assure political stability and national security. This security context justifies daily restrictions on civil society. Freedoms of association, expression and of assembly continue to be strictly limited. Arbitrary detention, torture and ill-treatment, and abusive criminal proceedings against all actors expressing dissent, including in particular human rights defenders, journalists, bloggers, political activists, minority spokespersons remain systematic.

A number of media workers, including bloggers and cyberdissidents, like Feras Saad<sup>9</sup>, Tarek Bayasy<sup>10</sup>, Imad Saady and Mazen Darwish, also faced arrest, oppression and harassment, and there are controls on media and the internet. The pretext of national security serves Syrian authorities to have a stranglehold on the judicial system and to use discriminatory legislation and practices against different actors of the society as

<sup>9</sup> A journalist who was prosecuted before the State Security Supreme Court on 28 October 2007.

<sup>10</sup> Arrested on 7 July 2008, he was charged following the publication on the internet of information with « weakening the moral of the Nation ». His trial shall resume on 17 March 2008 before the State Security Supreme Court.

women, the religious movements and the Kurdish minority, as well as use of torture on prisoners, carried out in total impunity. Human rights defenders continue to face arrests, harassment and restrictions on their freedom of movement.

**Recent wave of arrest against pro-reform advocates**

On 9 December 2007, in reaction to a meeting organised by the Damascus Declaration for National Democratic Change initiative on 1 December 2007, which gathered a wide coalition of political reform activists calling for establishing a democratic system that respects citizens' rights, ensures freedom of speech and association, and ends discrimination based on religious or political beliefs, the Syrian State Security Services began a series of arrests of more than forty activists in various cities in Syria.

This meeting which gathered 163 persons in Damascus and resulted in the creation of the National Council of the Damascus Declaration, a collective movement of opposition and pro-democracy groups in Syria, gathering political activists, as well as human rights defenders. . They were all transferred to Adra central prison and Ms. al-Hurani to Duma women 's prison.

Among the activists kept in detention and awaiting trial are human rights activists, political opponents and intellectuals.

They are: **Dr. Ahmad Tohme**, a political activist<sup>11</sup>, **Mr Jaber al-Shoufi**, member of the executive board of the Committees for the Defence of Freedoms and Human Rights in Syria<sup>12</sup>, **Mr. Akram al Bunni**, a member and founder of the Committee for the Revitalization of Civil Society in Syria<sup>13</sup>, **Dr. Fida al-Hurani**, a political activist<sup>14</sup>, **Mr Ali al-Abdullah**, a member of the Committee for the Revitalisation of Civil Society in Syria<sup>15</sup>, **Dr. Walid Bunni**, a political

activist<sup>16</sup>, **Dr. Yasser Tayser Aleiti**, an intellectual<sup>17</sup>, **Mr. Fayez Sarah**, a journalist and founding member of the Committees for Revitalising Civil Society in Syria<sup>18</sup>, **Mr. Mohammed Haj Darwish**, member of the Human Rights Association in Syria and a founding member of the Committees for Revitalizing Civil Society in Syria<sup>19</sup>, **Mr. Marwan Aloush**<sup>20</sup>, **Mr Riad Seif**, former member of the Syrian parliament and 'Damascus Spring' figurehead<sup>21</sup>, **Mr. Talal Abu Dan**, artist and political activist member of the Democratic party of people<sup>22</sup>. Some were allegedly subject to ill-treatment during custody, in particular Fayez Sarah and Ali al-Abdullah.

According to the Syrian Human Rights Organization (Sawasia), on 21 February 2008, **Dr Mohammad Kamal Ahmad al-Mouil**, member of the National Council of the Damascus Declaration was also arrested and his whereabouts remain unknown.

**General deterioration of the situation of pro-reform advocates, including human rights defenders**

The situation of pro-reform advocates, including human rights defenders in Syria has deteriorated over the past two years. The May 2006 "Beirut-Damascus, Damascus-Beirut" Declaration calling for better relations between Lebanon and Syria was followed by a severe crackdown on civil society. More recently the round-up of the supporters of the Damascus Declaration, the largest crackdown since the « Damascus Spring » in 2001, is a further escalation of the authorities' attempt to put an end to the movement of revitalisation of civil society<sup>23</sup>.

In 2008, **Mazen Darwish**, journalist and President of the Syrian Center for Media and Freedom of Expression, was arrested on 12 January 2008 in relation to his activities as a journalist. He appeared before a military court and was released on 14 January 2008. He is nonetheless charged with « defamation of

<sup>11</sup> Elected secretary to the Committee of the President of the National Council of the Damascus Declaration, he was arrested on 9 December 2007.

<sup>12</sup> Elected member to the General Secretariat of the Council of the Damascus Declaration, he was arrested on 9 December 2007.

<sup>13</sup> Elected secretary to the Committee of the President of the National Council of the Damascus Declaration, he was arrested on 11 December 2007.

<sup>14</sup> Elected President of the National Council of the Damascus Declaration, she was arrested on 16 December 2007.

<sup>15</sup> Elected member to the General Secretariat of the Council of the Damascus declaration, he was arrested on 17 December 2007

<sup>16</sup> Elected member to the Council of the Damascus Declaration, he was arrested on 17 December 2007.

<sup>17</sup> Elected member to the General Secretariat of the Council of the Damascus Declaration, he was arrested on 18 December 2007.

<sup>18</sup> Elected member to the Council of the Damascus Declaration, he was arrested on 3 January 2008.

<sup>19</sup> Elected member to the Council of the Damascus Declaration, he was arrested on 7 January 2008.

<sup>20</sup> Elected member to the Council of the Damascus Declaration, he was arrested on 15 January 2008.

<sup>21</sup> He was arrested on 28 January 2008.

<sup>22</sup> He was arrested on 30 January 2008.

<sup>23</sup> Please read the above paragraph for more details.

State departments » and « undermining national solidarity » which are punishable by up to one year imprisonment. Criminal proceedings are scheduled to start on 17 March 2008.

In 2007, several human rights defenders were sentenced by the Damascus Criminal Court. **Anwar Al-Bunni**, the Head of the Syrian Centre for Legal Studies, and **Michel Kilo**, President of the Organisation for the Defence of Freedom of Speech and Press « Huriyya », human rights activists who were arrested mid-May 2006 by security and intelligence forces after they had signed the Beirut-Damascus declaration, were respectively condemned on charges of “spreading false or exaggerated news that weaken the spirit of the nation” and for “weakening the national ethic”<sup>24</sup>. On the other hand, Mr. **Ali Shahabi**, a writer and a professor known for his strong involvement in the promotion of democracy and human rights in Syria, was granted a presidential amnesty on the occasion of Eid celebrations, and subsequently released on 9 January 2007 after being prosecuted for having signed the Beirut-Damascus Declaration in May 2006 and detained incommunicado after his arrest in August 2006.

Anwar Al-Bunni underwent another trial. On December 13, 2007, he was sued before the 3rd Military Court of Damascus for defamation against the Minister of Social Affairs, in application of the Law 376 of the Penal Code. He was denounced by a co-detainee for circulating letters outside the prison. This letter was considered a defamation offence by the Public Prosecutor. On 7 February 2008, the court decided to abandon the charges. Michel Kilo was subjected to the same charges before the criminal court. The proceedings were also discontinued.

**Kamal Labwani**, a member of the Committees for the Defense of Democratic Liberties and Human Rights in Syria (CDF) executive council and president of the secular liberal democratic party, former Damascus Spring detainee, arrested on 18 November 2005 upon his return from a trip abroad during which he met with European and American officials, was convicted on 10 May 2007 by the Damascus Criminal Court to 12 years of imprisonment for charges of “scheming with a foreign country, or communicating with one with the aim of causing it to attack Syria”. He is also subject to

criminal proceedings before a military court on charges of « publishing false news which would undermine the spirit of the nation ». The hearing will resume on 4 March 2008.

**Faek Al Mir**, a pro-reform advocate and political dissident, detained and prosecuted for exercising his right to freedom of expression and offering his condolences to the family of an assassinated friend, was sentenced to 18 months of imprisonment on 31 December 2007.

Several human rights defenders, sentenced to heavy prison terms following unfair criminal proceedings before the Supreme State Security Court (SSSC), remain in detention till this date. They include in particular **Aref Dalila**, a prominent academic and pro-democracy advocate, arrested during the crackdown of the "Damascus Spring", who continues to serve since 2001 a 10-year prison sentence for criticizing the government in the context of the Damascus Spring; **Riyad Drar**, and **Nizar Rastanawi**. In 2006, Aref Dalila suffered a severe stroke and was reportedly denied proper medical care by the prison authorities. Due to the harsh conditions of detention, Mr. Aref Dalilah's health has worsened and is deteriorating.

**Firas Saad**, a freelance writer, who worked for a short time for a liberal and pro-democracy party of the opposition, was also arrested in 2006, then transferred to the State Security Supreme Court in Damascus and charged with « propagation of false news weakening the spirit of the nation ». He is still in pre-trial detention and awaits trial.

#### ***Failure to register human rights associations***

A majority of active human rights associations have all been denied registration by the Ministry of Social Affairs have not been registered due to the systematic refusal of the Ministry of Social Affairs and Labour. Their members continue to operate illegally under the constant threat of being prosecuted and jailed pursuant to Article 71 of Law No. 93 on associations. Additionally Article 288 of Syria's Penal Code imposes a sentence of up to three years in jail for anyone in Syria who “without governmental authorization joins a political or social organization of an international character.”

As a recent example, the Ministry for Labour and Social Affairs denied registration to the National Organisation for Human Rights in Syria (NOHRS) in 2006 on the grounds that it would be contrary to « public interest ». NOHRS has challenged the decision before the administrative court. Proceedings are still

<sup>24</sup> **Mahmoud Eissa**, member of the opposition, was also condemned together with Michel Kilo.

pending.

**Travel bans opposed to human rights defenders**

. On 11 January 2007, Mr. Akram Al-Bunni, was prevented from leaving Syria by the security forces. Mr. Al-Bunni was to fly to Belgium in order to attend a meeting with several European Union representatives, to discuss the situation of human rights and human rights defenders in Syria. No official reason was given to him regarding this ban.

Mr. Jihad Msoti, member of the Al-Atassi Forum, was arrested in November 2007 among several other Syrian human rights defenders, as they were heading to Cairo, Egypt, to attend a workshop organised by FIDH. Mr. Radeef Mustafa, Chairman of the Kurdish Human Rights Committee, Mr. Mustafa Ouso, Head of the Kurdish organization for the Defence of Human Rights and Fundamental Freedoms in Syria (DAD), and Mr. Hasan Masho, a board member of the Organisation of Human Rights in Syria (Mav), as well as Mr. Khalil Maatouk and Mr. Muhannad Al Husni, human rights lawyers – were prevented from travelling and from participating to the above-mentioned workshop, following confiscation of their passports by the authorities.

Dr. Ammar Qurabi, Chairman of NOHR-S, was also prevented from travelling to Jordan in November 2007, to participate in a seminar entitled “The role of civil society organizations in political reform in the Arab world”, organized by the Amman Centre for Human Rights Studies and the Aspen Institute of Berlin, without providing any explanation for this decision.

***Violence and discrimination against Kurdish community***

Kurds in Syria make up almost 10% of the population, numbering between 1.5 and two million, but an estimated 200,000 to 360,000 are not recognised as citizens. They suffer severe discrimination because of their ethnicity<sup>25</sup>.

Kurdish human rights defenders and civil society

<sup>25</sup> Kurdish is not recognised as an official language: its use in schools, private celebrations and in the workplace is apparently forbidden. There are unconfirmed reports that by the summer of 2002 the authorities had raised the maximum sentence for printing in Kurdish, as well as for teaching the language, to five years' imprisonment. Kurds celebrating traditional festivals, such as the Kurdish new year, which takes place in March are subject to arbitrary arrest.

activists are particularly at risk of arrest and imprisonment on charges which are mostly used against Kurds, including attempting to sever part of the Syrian territory and annex it to a foreign state and that can be lead to trials before the Supreme State Security Court (SSSC) or military courts.

On 30 May 2005, Sheikh Muhammad Mashuq al-Khiznawi, an Islamic religious leader and outspoken figure within the Kurdish community, died 20 days after he disappeared, apparently in the custody of Military Intelligence agents. When the body was released by the authorities to his family, the official state news agency claimed he had been killed by criminals. His body apparently showed signs of torture, including the fact that his nose and teeth were broken. He was known for his criticism of violence and terrorism, and had recently called for reforms in Syria and for more dialogue between religious groups.

On 20 December 2006, Kurdish activist and Secretary of the outlawed Syrian Kurdish Democratic Unity Party, Muhi al-Din Sheikh Aali was arrested by state security police and then released two months after.

According to DAD, on 29 January 2007, Syrian authorities stormed on the house of a Kurdish citizen in Aleppo (Sheikh Maqsoud area) and arrested a group of Kurdish citizens without judicial decision or mention any reason for this arrest. Some of those who have been arrested are Azad Qader, Juan Qader, Bashar Qader, Ahmad Nasaan and Najm Eldin Habash.

According to C.D.F., on 3 February 2008, the State Security Supreme Court in Damascus sentenced Ali Ahmed Habash, Hamid Suleiman Mohamed, Kurdish Syrian citizens to 10 years of imprisonment pursuant to Article 267 of the Syrian Penal Code related to attempts through acts, speeches, writings or otherwise to sever part of Syrian territory for annexation or creation of a separate state. Haj Ibrahim Youssef, Adnan Muammc, Kurdish Syrian citizens were sentenced to 7 years of imprisonment pursuant to the same provision.

After preventing the Kurdish Democratic Union Party together in Syria on 15 February 2008, the Syrian authorities launched a campaign of arrest of citizens of Kurdish origin. On 17 February 2008 were arrested Hozan Ibrahim Mohammed Amin in front of the University of Damascus; Ms. Hanifa Leem, former MP; Ms. Jihan Muhammad Ali in Aleppo; Mr. Eilikh Abu Abbas in Aleppo; Mr. Subhi Mustafa.

***Women's rights***



According to information, the Syrian Minister of Labour and Social Affairs, Dr. Diala Al-Haj Aref decreed that all Organisations under his Ministry as well as Insurance Directors in Syrian provinces shall not to cooperate with members of the " Syrian Women's Association". The Ministry of Labour and Social Affairs referred to Syrian Parliamentary Law No. 3681, which states that a group of Syrian female personalities are practising illegal activities under the umbrella of the Syrian Women's Association.

Since June 2006, however, there has been a noticeable decline in the rate of new arrivals. In fact, the government has put more restrictions on Somalis entering the country: more Somalis being turned away now than are being let into Syria. Those that are fortunate enough to have escaped war-torn Somalia find themselves fighting a different battle in Syria.

The Syrian Women's Association has been running since 1948 under the name 'Syrian Women Association for the Protection of Motherhood and Children', in addition the Syrian Women's Association has been granted by the Syrian Ministry of Labour and Social Affairs in the year 1957 under Law No. 5424 official permission to operate in Syria.

On 20 August 2007, an association providing general support to women victims of domestic violence, which had filed an application on 30 September 2006, was denied registration under the pretext that they intended to follow "the same goals as the General Women's Union".

Moreover, Syria is increasingly becoming a popular destination for trafficking Iraqi women, according to humanitarian agencies A correlation has been made between the deteriorating conditions of Iraqi citizens and an increase in prostitution and trafficking of Iraqi sex workers.

### ***Ordeal faced by migrants and refugees in Syria***

During recent years Syria has been facing a new wave of refugees arrivals, Iraqis and Somalis. Today their number decreased as few are granted visas. All Somalis originating from Mogadishu and the south of the country who arrive in Syria are granted automatic refugee status, if they are protected under international law from being repatriated because of the dangers they would face back home. This also limits them from being resettled in a third country as they must claim asylum on the basis of being individually persecuted. Syria has not ratified the 1951 UN Refugee Convention that protects refugees from deportation.

The number of Somalis, registered as refugees over the past six months drastically increased. In 2003, UNHCR Damascus registered 272 Somali refugees, with 22 cases, usually a family averaging four to five members, recognised for resettlement to a third country.

## AMERICAS

### 1. Colombie

En 2008, la Colombie est toujours ravagée par le même conflit armé interne, caractérisé par tous types d'abus commis aussi bien par les forces armées régulières, les groupes paramilitaires que par les factions de guérillas. La démobilisation des groupes paramilitaires demeure largement factice, malgré les déclarations du Gouvernement. Les groupes armés irréguliers continuent de se financer essentiellement par le biais du trafic de drogues. La population civile reste la plus touchée, entre personnes déplacées, disparitions forcées, exécutions, assassinats et enlèvements.

Les défenseurs des droits de l'Homme et les médias sont toujours les cibles privilégiées d'attaques et d'exactions.

#### *Démobilisation des paramilitaires*

La Loi de "Justicia y Paz" ("Justice et Paix") s'inscrit dans un cadre juridique qui vise à obtenir, selon les autorités, la démobilisation des paramilitaires, responsables de crimes contre l'humanité, crimes de guerre et autres violations graves des droits de l'Homme.

Les structures paramilitaires auraient commis, depuis leur création, 60 000 crimes contre l'humanité, ou violations graves des droits de l'Homme. Ce chiffre exclut les personnes déplacées, qui seraient plus d'un million, et dont la situation serait une conséquence directe des stratégies de terreur, des menaces et des activités paramilitaires. La Colombie est le deuxième pays au monde quant aux déplacements forcés de population. En 2006, plus de 219 000 personnes ont été déplacées, et au total, 380 000 familles auraient été déplacées<sup>26</sup>. Entre janvier et juillet 2007, plus de 770 civils ont été assassinés ou victimes de disparition forcée. Plus de 80 fosses communes ont été découvertes et, fin 2006, « la Fiscalía » estimait que 3 000 personnes étaient toujours portées disparues. Cependant, ce chiffre est loin de refléter le nombre réel de disparitions forcées, qui avoisine probablement les 15 000.

<sup>26</sup> Selon le Comité International de la Croix-Rouge, 45 000 personnes se seraient déplacées en 2005, 67 000 en 2006 et les estimations pour 2007 atteindraient 72 000 personnes. Le phénomène est en constante augmentation malgré la supposée démobilisation des groupes paramilitaires, qui opèrent toujours dans les différentes régions du pays.

Dans un rapport publié le 02 octobre 2007<sup>27</sup>, la FIDH a démontré le manque de réelle volonté de l'Etat de juger et démanteler les groupes paramilitaires et a conclu que la Cour Pénale Internationale devait également intervenir afin d'enquêter et de juger les responsables de crimes contre l'humanité commis en Colombie depuis le 1er novembre 2002.

Des 30 000 paramilitaires démobilisés, 92% ont bénéficié d'un régime d'amnistie *de facto*, institué par décret<sup>28</sup>. Seuls 8% d'entre eux relèvent de la compétence de la Loi Justice et Paix, mise en oeuvre par des décrets qui ne respectent pas la décision de la Cour Constitutionnelle, qui a estimé que cette loi devait être revue afin de ne pas violer le droit des victimes à la vérité, à la justice et à la réparation. Les paramilitaires tombant sous le coup de la Loi de Justice et Paix sont jugés dans des audiences appelées "versions libres", et peuvent être condamnés à une peine maximale de 8 ans, qu'ils peuvent purger dans des "fermes productives" ou dans des conditions qu'ils sont libres de choisir, ce qui est contraire aux principes les plus élémentaires de la justice, face à la gravité des crimes commis.

Les audiences prévues par la Loi Justice et Paix se sont transformées en apologie des délits et du paramilitarisme. Les paramilitaires ne sont, d'ailleurs, pas tenus d'avouer leurs crimes ni de dévoiler la vérité sur les appuis dont bénéficient leurs structures, ni d'exprimer de repentir pour leurs crimes. Ils n'ont pas été non plus obligés de restituer toutes leurs armes de guerre, ni leurs biens, en guise de réparation aux victimes, alors que celles-ci, et leurs représentants, doivent surmonter de nombreux obstacles pour pouvoir participer aux audiences.

En outre, les victimes ayant assisté aux audiences de versions libres n'ont reçu aucune protection adéquate; 16 d'entre elles ont été assassinées en totale impunité.

La FIDH conclut que ce processus a été lancé dans le but de soustraire les hauts dirigeants paramilitaires à la juridiction de la CPI.

#### *FARC et otages*

Plus de 700 personnes demeurent aux mains des FARC. Cependant avec la libération par les FARC de Clara

<sup>27</sup> Idem.

<sup>28</sup> Voir le rapport « La desmovilizacion paramilitar: en los caminos de la Corte Penal Internacional », 02 octobre 2007, disponible sur le site [www.fidh.org](http://www.fidh.org)

Rojas et de Consuelo Gonzalez le 22 janvier dernier, une possibilité de négociation d'un accord humanitaire semble exister.

La FIDH condamne fermement les prises d'otages et le traitement inhumain et dégradant des otages par les FARC et appelle à la libération immédiate et inconditionnelle des personnes retenues en otage. La FIDH appelle les FARC et le gouvernement colombien à montrer une volonté réelle de négocier, afin de conclure un accord humanitaire qui mette un terme à la situation actuelle.

La FIDH est préoccupée par la dégradation des relations diplomatiques entre la Colombie et le Venezuela, alors que la médiation du Venezuela qui avait été permise par les autorités colombiennes s'est révélée, jusqu'à présent, être le seul moyen permettant quelques avancées.

#### ***Inquiétudes quant au respect de l'indépendance de la Justice***

La FIDH est très préoccupée par la décision du Président Uribe de porter plainte, au pénal, contre M. César Julio Valencia Copete, Président de la Cour Suprême de Justice colombienne, pour insultes et calomnies, suite à la notification d'interrogatoire lancée par la Cour Suprême à l'encontre de l'ancien sénateur Mario Uribe, cousin du Président, qui est détenu et poursuivi pour ses liens supposés avec les groupes paramilitaires.

Cette attitude, qui s'additionne aux précédentes attaques contre la chambre pénale de la Cour, constitue une atteinte grave à l'indépendance de la Justice. La FIDH craint que le gouvernement tente de faire obstacle au processus d'assainissement des institutions colombiennes qui devrait contribuer à la légitimité de l'Etat et à l'effectivité totale de l'Etat Social de Droit.

La FIDH soutient l'exigence de la Cour Suprême de respect de son travail.

En octobre 2007, la FIDH avait déjà exprimé, lors d'une mission internationale, ses préoccupations au sujet de la sécurité des magistrats de la Cour Suprême de Justice et des menaces pesant contre eux.

La Cour Suprême de Justice par son travail défend les derniers bastions de la démocratie et elle affirme l'indépendance et l'impartialité du pouvoir judiciaire dans un pays dans lequel les acteurs mafieux et violents cherche à soumettre tant la justice que la

démocratie.

Suite à la plainte déposée par M. Uribe contre M. César Julio Valencia Copete, la FIDH a saisi le Rapporteur Spécial des Nations Unies sur l'Indépendance des Juges et des Avocats.

#### ***Défenseurs des droits de l'Homme***

En juillet 2007, la FIDH a publié un rapport intitulé « Colombie: les ténèbres de l'impunité, mort et persécution contre les défenseurs des Droits de l'Homme » dans lequel elle évalue la situation des défenseurs des droits de l'Homme sur la période 2002-2007.

Ce rapport constate que la situation des défenseurs a encore été, sur la période concernée, particulièrement difficile. Les défenseurs font toujours l'objet de sérieuses violations des droits de l'Homme et du droit international humanitaire, telles qu'assassinats, disparitions forcées, exécutions extrajudiciaires, agressions sexuelles, tortures, menaces, déplacements forcés, dénonciations, détentions et mise en examen sans fondements, destruction ou attaques de locaux et soustraction de documents et de matériel informatique, et autres atteintes graves aux droits de l'Homme. Parmi les auteurs de ces faits, on retrouve des organismes étatiques et les groupes paramilitaires qui leur sont liés, ainsi que les groupes guérilleros qui agissent dans le pays.

Les processus de démobilisation des organisations paramilitaires lancés ces dernières années, contrairement à ce que soutiennent les autorités du pays, n'ont débouché ni sur la pacification du pays, ni sur une plus grande protection des défenseurs des droits de l'Homme. Les groupes paramilitaires, parfois sous de nouveaux noms, agissent spécifiquement contre les défenseurs des droits de l'Homme qui dénoncent les crimes que les paramilitaires continuent à perpétrer dans plusieurs régions du pays.

Le discours officiel des autorités colombiennes sur les défenseurs des droits de l'Homme est pour le moins contradictoire. Il est généralement dévalorisant et agressif. Les organisations de défenseurs des droits de l'Homme sont souvent présentées, parfois par le Président en personne, comme étant proches de la guérilla et contre la politique gouvernementale de « sécurité démocratique ». Cela étant dit, quelques documents officiels reconnaissent la mission capitale effectuée par les défenseurs des droits de l'Homme et leur participation à des espaces de concertation de politique publique dans les matières qui leur sont propres, soulignant les efforts réalisés pour l'adoption de mesures préventives et protectrices dans des

situations de risque.

Les discours mettant en cause le travail des défenseurs des droits de l'Homme sont la cause de l'insécurité dont sont victimes les défenseurs et les leaders sociaux et encouragent les organisations paramilitaires dans leurs objectifs criminels.

Les politiques et les programmes de protection de la sécurité des défenseurs des droits de l'Homme se sont révélés clairement insuffisants. Deux types de problèmes les affectent: les limitations économiques, malgré les efforts budgétaires de ces dernières années et, fondamentalement, le fait que certains membres d'organismes étatiques ayant été mis en cause, et parfois condamnés, pour avoir participé à des violations graves des Droits de l'Homme et/ou pour leur connexion avec des organisations paramilitaires, participent à la prise de décision dans ces programmes.

L'impunité dans les cas de violations des droits de l'Homme les plus graves commises contre des défenseurs n'a pas été surmontée. Des mesures législatives telles que la Loi de Justice et de Paix n'ont pas constitué des solutions efficaces pour connaître la vérité sur les crimes graves dont sont accusés ceux qui ont été jugés sur la base de cette loi. L'impunité dont jouissent de nombreux accusés ne permet pas de procéder à une juste réparation des préjudices, parfois très graves, occasionnés aux victimes, et le message qui en résulte pour la société colombienne est que le crime profite toujours et que les dommages soufferts ne sont jamais compensés.

Ainsi, il est urgent de supprimer les effets dévastateurs causés par l'impunité dans la société et de mettre en place des politiques destinées à renforcer l'administration de la Justice, en augmentant les moyens mis à sa disposition, les garanties de son indépendance et sa professionnalisation. Ces politiques doivent nécessairement inclure le Pouvoir Judiciaire -tant la branche civile que la branche militaire-, « la Fiscalía General de la Nación » et tous les autres opérateurs juridiques.

**Pour toutes ces raisons, la FIDH demande au Conseil des Droits de l'Homme des Nations Unies d'adopter une résolution sur la situation des droits de l'Homme en Colombie, dans laquelle elle :**

- **demande au gouvernement colombien d'abroger de toute urgence le cadre juridique de la Loi de Justice et de Paix et de créer un**

**cadre légal qui satisfasse aux standards internationaux.**

- **exige du Gouvernement colombien le respect de l'indépendance de la Justice et de garantir la sécurité et l'intégrité des magistrats, souvent stigmatisés par le Président en personne devant l'opinion publique.**

- **exhorte le gouvernement colombien à reconnaître officiellement le travail légitime des défenseurs des droits de l'Homme, ainsi que le devoir qui incombe à toutes les autorités de les protéger et de les soutenir;**

- **demande de mettre en oeuvre toutes les recommandations du bureau du Haut Commissaire des droits de l'Homme en Colombie**

- **exige la révision de la politique de sécurité démocratique à l'aune des obligations internationales en matière de droits de l'Homme et de droit international humanitaire;**

- **demande au gouvernement colombien de signer et ratifier la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées approuvée par l'Assemblée Générale des Nations Unies le 20 décembre 2006;**

## 2. Guatemala

Más de diez años después de su firma, los Acuerdos de Paz que pusieron un término a 36 años de guerra civil y a lo que fue el más grande genocidio de toda América Latina en el siglo XX siguen sin cumplirse. Los profundos problemas persisten: los crímenes del pasado y del presente benefician de una impunidad total, lo cual lleva a un círculo vicioso que propicia un clima de extrema violencia y la comisión diaria de graves violaciones de derechos humanos tanto civiles y políticos (sobre todo del derecho a la vida) como económicos, sociales y culturales en una sociedad profundamente racista.

### *I Una impunidad total que favorece un clima de violencia generalizado*

En julio de 2006, después de muchos años de impunidad para los responsables del genocidio en Guatemala, frente a la inacción del sistema judicial guatemalteco, las autoridades judiciales españolas lanzaron varios mandatos internacionales de arresto, y transmitieron a las autoridades judiciales guatemaltecas solicitudes de extradición contra siete personas que ejercían las funciones más altas en la cadena de mando (Ángel Aníbal Guevara, Germán Chupina, Humberto Mejía Vítores, Pedro García Arredondo, Donaldo Álvarez, Benedicto Lucas García y Efraín Ríos Montt) para que sean juzgadas en España por genocidio, tortura, desaparición forzada y ejecuciones extrajudiciales.

Desde aquél entonces, la instrucción de estos expedientes ha sido obstaculizada por recursos dilatorios formulados por la defensa de los imputados y, el pasado 14 de diciembre, la Corte de Constitucionalidad de la República de Guatemala rechazó la extradición a España de Ángel Aníbal Guevara Rodríguez, ex ministro de la defensa, y Pedro García Arredondo, antiguo comandante de la policía.

La FIDH deplora que la Corte de Constitucionalidad no haya tomado en cuenta la flagrante denegación de justicia que existe en Guatemala y haya negado la existencia del principio de jurisdicción universal. La FIDH encuentra igualmente preocupante que la Corte de Consitucionalidad haya caracterizado los crímenes cometidos como « indudablemente conexos con delitos de tipo político »<sup>29</sup>.

La FIDH ve esta decisión como emblemática de la

falta de voluntad que existe en Guatemala para investigar, juzgar y sancionar a los responsables de violaciones graves de los derechos humanos, ello en conformidad con el derecho internacional.

Esta impunidad de los crímenes del pasado impidió la depuración del estado y la sanción de los responsables de violaciones graves de derechos humanos (genocidio, crímenes de lesa humanidad y tortura) lo cual fomenta, hoy en día, una extrema violencia que sigue aumentando. En 2006, se repertoriaron 5.8851 muertes violentas, contra 5.338 en 2005. Esta cifra es la más alta de los últimos 10 años y existen condenas en apenas un 10% de los casos.

Un ejemplo emblemático fue el asesinato, el 19 de febrero de 2007, de tres diputados salvadoreños del Parlamento Centroamericano por miembros de la policía nacional que fueron, a su vez, asesinados en una de las cárceles de más alta seguridad del país, el 25 de febrero de 2007.

Las mujeres sufren particularmente de este clima de inseguridad e impunidad y se señala, cada vez, un aumento de los asesinatos y violencias en contra de niñas y mujeres lo cual es extremadamente preocupante. La FIDH considera que:

- Los feminicidios son la expresión extrema de la persistencia de la discriminación contra las mujeres en todos los ámbitos, las mujeres pobres e indígenas siendo particularmente vulnerables. Las violencias contra las mujeres ocurren tanto en el ámbito público (entre otros, por miembros de la policía) como privado (violencia intrafamiliar).
- Las políticas de prevención son escasas y no se encuentran articuladas a una política general de seguridad que dé prioridad a la prevención y atienda de manera contundente la problemática de los CIACS.
- Los agresores no están siendo castigados, no existen las condiciones que permitan un debido proceso que garantice el respeto de los derechos de las víctimas y en muchos casos, éstas son señaladas y tratadas como delinquentes y sus familias estigmatizadas.

En este contexto, la FIDH considera que será fundamental el actuar de la Comisión Internacional Contra la Impunidad en Guatemala (CICIG) que fue aprobada por el Congreso el 1ro de agosto de 2007, a condición que los distintos órganos del Estado colaboren plenamente con la CICIG.

### *II Pena de muerte*

La FIDH deplora la aprobación el día 12 de febrero 2008 por el Congreso de Guatemala de la ley de

<sup>29</sup> p. 22 de la sentencia

indulto, decreto 6-2008, que hace de nuevo posible tras ocho años de suspensión, las ejecuciones de los reos condenados a la pena de muerte. La FIDH está convencida que la pena capital no es un instrumento adecuado para disminuir el alto nivel de criminalidad que existe en Guatemala. Solamente una verdadera lucha contra la impunidad de los crímenes, tanto recientes como los que fueron cometidos durante el conflicto armado interno como el genocidio, llevará a restablecer un Estado de derecho en el cual los ciudadanos puedan gozar de seguridad. La FIDH ve la pena de muerte como un trato cruel, inhumano y degradante, contrario al derecho a la vida.

Este decreto que contempla la figura del silencio administrativo en sentido negativo contradice las obligaciones internacionales de derechos humanos del Estado de Guatemala sobre las garantías del debido proceso. Entra también en contradicción con el compromiso asumido por Guatemala al pronunciarse a favor de la moratoria en el contexto de la adopción de la resolución a favor de una moratoria universal por la Asamblea General de las Naciones Unidas, el 18 de diciembre de 2007.

## ***II Los defensores de derechos humanos, blanco particular de la violencia***

Los defensores de derechos humanos son también víctimas de agresiones: asesinatos, desapariciones forzadas, amenazas y actos de hostigamiento. En el 2006, se registró un aumento de las agresiones contra los defensores: 278 casos entre enero y diciembre de 2006, contra 224 en 2005<sup>30</sup>; de julio de 2002 a diciembre de 2007, el promedio ha sido de una agresión cada dos días. Los ataques son dirigidos sobre todo en contra de los defensores y líderes de movimientos sociales, medioambientales y dirigentes campesinos que luchan por el respeto de los derechos económicos, sociales y culturales. Otro blanco particular son los defensores que persiguen la verdad y la justicia en relación con las violaciones de los derechos humanos cometidas durante el conflicto armado interno. A principios de 2007, se registró un recrudecimiento de la violencia hacia estos últimos. Por ejemplo, se denunciaron ataques en contra de CALDH que asesora legalmente a la Asociación para la Justicia y Reconciliación (AJR), en el caso

<sup>30</sup> Informe 2006 del Observatorio para la Protección de los Defensores de Derechos Humanos (programa conjunto de la Organización Mundial Contra la Tortura (OMCT) y de la Federación Internacional de Derechos Humanos (FIDH))

presentado contra el ex dictador Efraín Ríos Montt y otros militares por genocidio cometido durante su período, a la UPD-MNDH que lleva el registro de todos los casos de ataques a defensoras y defensores de derechos humanos y a COMUNICARTE que estaba, en febrero de 2007, finalizando documentales sobre el mencionado genocidio, y otros como la Masacre de las Dos Erres.

En el 98% de los casos, estos ataques quedan impunes. A este respecto, la FIDH considera muy importante los posicionamientos tomados por la Oficina del ACNUDH en Guatemala así como por los comités y relatores especiales de las Naciones Unidas en los cuales se denunciaron estos ataques y actos de persecución.

***Ante la gravedad de la situación en Guatemala, la FIDH pide al Consejo de Derechos Humanos de las Naciones Unidas que recomiende al Gobierno de Guatemala de:***

**- Implementar los Acuerdos de Paz en su conjunto, procediendo a las reformas necesarias en materia de justicia y respecto a la reforma agraria, entre otros.**

**- Poner su derecho en conformidad con los estándares internacionales, entre otros en materia de tortura, discriminación y violencia hacia las mujeres. Abrogar todas las normas discriminatorias hacia las mujeres y los indígenas y crear nuevas normas que promuevan la igualdad y que restablezcan las desigualdades, utilizando la discriminación positiva si hace falta.**

**- Ratificar el protocolo facultativo de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes.**

**- Tipificar la violencia intrafamiliar y el acoso sexual como delitos, previendo circunstancias agravantes tales como la condición de menor de edad de la víctima y el origen indígena.**

**- Respetar las disposiciones de la Declaración de Naciones Unidas sobre los Defensores de los Derechos Humanos.**

**- Juzgar a las personas demandadas por la justicia española bajo el principio de jurisdicción universal o extraditarlas..**

**- Proceder a una depuración de la policía nacional, de los órganos de la justicia y de la administración para que no se sigan cometiendo crímenes desde el**

**Estado y para que se investiguen, se juzguen y se sancionen a los autores de crímenes.**

**- Eliminar del derecho interno todas las disposiciones que permiten al Ejército de intervenir en materia de criminalidad común.**

**- Dotar a las instituciones del sistema de justicia con los recursos financieros, humanos y técnicos para ampliar su cobertura a todo el territorio nacional y capacitar los funcionarios (policía, ejército, jueces y abogados, etc) en materia de derechos humanos.**

**- Llamar todas las instancias del Estado a que colaboren plenamente con la CICIG.**

**- Ratificar el Estatuto de Roma sobre la Corte Penal Internacional.**

**- Llamar el Presidente de Guatemala, el Sr. Alvaro Colón, a vetar el decreto 6-2008 y a declarar de inmediato una moratoria sobre la pena de muerte y pedir a todas las autoridades a que trabajen a favor de una abolición de este castigo, en conformidad con la resolución de la Asamblea General de las Naciones Unidas adoptada el 18 de diciembre 2007 que llama a un moratorio universal, y ratificar el Segundo Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, destinado a abolir la pena de muerte. Convertir las sentencias de pena de muerte en privaciones de libertad.**

## EASTERN EUROPE

### Russian Federation

#### *Freedom of expression and the media*

Freedom of media and expression is increasingly violated, especially concerning freedom of association and freedom of expression. Independent media are being shut down and face harassments. Pressure is exerted on journalists and observers covering the opposition demonstrations. During the night of 23-24 November, Oleg Orlov, Head of HRC "Memorial", and three journalists from "Ren-TV", Artyom Vystotsky, Stanislav Goryachev and Karen Sakhinov, were abducted from the hotel in Nazran (Ingushetia) by armed masked men who beat them, threatened to kill them and then abandoned them in a field in the Sounjenski district. They went a nearby police post to lodge a complaint but were sent to the Nazran police station where they were interrogated for several hours. Some required emergency care, which they were not given at first. This occurred a few hours before a demonstration was to be held in Nazran, the capital of Ingushetia, to protest against human rights violations in this republic, where the situation has been rapidly deteriorating over the last few months. The demonstration on 24 November was also brutally repressed by the local police, which shot at the demonstrators before violently breaking up the group. Several participants were wounded and many of them were arrested.

Protest rallies were severely repressed by police throughout the year in Moscow, Saint Petersburg, Nizhi Novgorod, Nazran and other Russian cities. On 26 November the President of the European Commission, José Manuel Barroso, said to be "greatly concerned" at the repression of opposition demonstrations in Russia. "*The right to free expression and the right of assembly are fundamental human rights and I strongly regret that the Russian authorities felt the need to resort to such brutal actions*", said Mr Barroso. Regrettably, no official reaction followed the un-precedental abduction and ill-treatment of the prominent human right defender and HRC «Memorial»'s head Mr. Oleg Orlov.

Furthemore, two independant journalists were arbitrarily sent to psychiatric hospitals in 2007. Larissa Arap<sup>31</sup> was arrested on 5 July 2007 and would

have been forcefully injected with drugs and beaten. She was ill-treated for many weeks and was released only on 20 August 2007. The doctors did not explain their decision and made her sign an agreement to continue her prescribed treatment at home. Andrei Novikov, arrested on 5 December 2006 and charged with "publicly inciting constitutional change by means of force". A psychiatric commission that examined him in January 2007 claimed that he displayed "antisocial behaviour" and "maladaptation." Under strong international pressure, Andrei Novikov was released on 6 December 2007.

More then a year after the crime, the murder of the independant journalist Anna Politkovskaya, killed on October, 7, 2006 remains unsolved.

Those who work on the human rights situation in Russia from abroad, face increasing difficulties to enter the country and lead their research and work. On 28 October 2007, Ms. Annemarie Gielen, a Dutch member of Pax Christi and an expert on Russia, known for her work in favour of the peace in Chechnya, came to Moscow. She accompanied Mr. Bart Staes, a Belgian Green member of the European Parliament, for a working visit by the European Green Party that aimed at encouraging political opponents and human right defenders. Ms Gielen was invited as an NGO observer. They were both stopped at the passport control at Domodedovo airport even though they had valid visas. Mr. Staes was allowed to pass after an hour and a half, whereas Ms. Gielen was put on a return flight to Brussels, after 24 hours. During her wait she was detained in a locked room with guards. The border officers told her that her presence in Russia was not desirable and that she would not be allowed back in the country for a period of five years.

#### *Human rights defenders*

In 2007, it became clear that the adoption of the new Russian legislation on non-governmental organizations (NGOs) in 2006 severely aggravated their situation, putting them under an omnipresent control and regular checking often impeaching their main activities. Human rights defenders and democratic NGOs are suspected and easily accused on an official level of political activities, "interference in political life" and of accepting financial support from abroad (referred to as "anti-national activity and promotion of hostile interests). In November-December 2007 the Duma election campaign was largely dominated by Kremlin-controlled broadcast media and marked with widespread allegations of voter intimidation and fraud.

<sup>31</sup> See The Observatory for the Protection of Human Rights Defenders (a joint programme of OMCT and FIDH)

Urgent appeal RUS 005 / 0807 / OBS 087.2 from August 21, 2007



Putin himself called all his opponents "scavenging jackals" seeking funds from foreign embassies to destabilize Russia, making clear allegations not only to political activists but to all critical voices within the country.

On 15 January 2008, the Prosecutor's office of Ingushetia lodged a suit against the Voice of Beslan (a non-governmental organisation that gathers mothers of victims of the 2004 Beslan school hostage-taking) accusing them of "extremist activities". These charges fall under Russia's 2007 amended Law on extremism which broadened the definition of extremist activities to include the "slander of public officials" and "humiliating national pride". They were linked with a statement made by the Voice of Beslan on 30 November 2005 accusing President Putin of refusing to launch an independent investigation into the battle that ended the siege that killed many hostages in September 2004.

The violent abduction on November 2007 of Mr. Oleg Orlov, head of the HRC Memorial, cited before, has been never properly investigated and marked a new step in the growing harassments of prominent human rights defenders. This violent trend was confirmed by the assassination of Mr. Farid Babaev, who was running for the Russian State Duma elections for the *Yabloko* party and was largely involved in human rights activities in Daghestan. Mr. Babaev was returning home from the Yabloko Party Headquarters when unidentified assailants opened fire. He was then brought to hospital in a critical condition, suffering a serious injury to his head. He died on 24 November 2007. In particular, Mr. Babaev had been enquiring into enforced disappearances, torture, summary executions and police brutality.

### **Democratic rights**

Respect of citizen's right of vote, largely violated in the past years, faced in 2007 most alarming developments. The up-coming March 2008 presidential election campaign has been marked by clear inequalities in candidates. Unequal conditions exist for candidates nominated by the parties not present in the State Duma and self-nominated candidates in comparison with State Duma parties' nominees. These three categories have different terms of nomination and registration, placing self-nominated candidates with biggest disadvantage. On the 27 January 2008 the Electoral Commission disqualified opposition candidate Mr. Kasyanov from participating in the elections. His representatives submitted

2,063,666 signatures which were checked by graphologists from Ministry of Interior, FSB and Ministry of Justice. Out of the first 600,000 signatures checked 80,261 were found unacceptable. A closer inspection reveals that only a third of the disqualified signatures have been found "inadequate" by the experts. All other signatures were disqualified for various "technical" and "formal" reasons.<sup>32</sup> Both the Presidential campaign, and the recent Duma campaign were equally characterized by the high level of administrative resource abuses. For example, Presidential candidates received coverage of 7 hours 56 min on federal TV channels during January 2008. Out of that, 85.6% was given to the governmental candidate Mr. Medvedev, 5.6% - to Mr. Zhirinovski, 4.4% - to Mr. Zyuganov and to Mr. Bogdanov each.<sup>33</sup>

Christian Strohal, Director of the Office for Democratic Institutions and Human Rights (ODIHR), the Organization for Security and Cooperation in Europe's (OSCE) election-monitoring arm, declared on February 7, 2008 that ODIHR will not observe Russia's presidential election because of "severe restrictions" imposed by Russian authorities. This was also the case in the December 2007 Duma elections.

Moreover, the independent election observers during both campaigns faced unprecedented harassments. This was the case in November-December 2007 in Krasnoyarsk, Oriol, Voronezh, Samara, Irkutsk and other regions. «GOLOS» association staff and activists were detained or invited for the «preventive talks» with the law-enforcing authorities without official notification. This resulted in three of «GOLOS» regional representatives in Krasnoyarsk resigning on 30 November. On the same day Dmitry Krayuhin, «GOLOS» member and well-known human rights activist in Oriol was arrested when approaching his office for «attempting to steal a mobile phone».

### **Racism, radical nationalism and the situation of minorities**

For several years the development of radical nationalist and racist movements and attacks in Russia have been noted. Only in the first month of 2008, no less than 39 people became victims of racial and neo-nazi violence, resulting in 13 fatalities.<sup>34</sup>

<sup>32</sup> GOLOS 1st Statement on Findings of Monitoring 2008 Presidential Campaign / <http://golos.org/a1126.html>

<sup>33</sup> Idem.

<sup>34</sup> Statistics provided by the SOVA center / [www.sova-](http://www.sova-)

FIDH notices that efforts to combat the hate offences continue to lag behind. Furthermore, the proceedings are extremely long and, indeed, many racist offences are never detected.

Despite the demographic crisis in Russia, the new migration legislation, entered in force in January 2007, has increased restrictions and made the situation of migrants in Russia more difficult. The labor legislation in force has an openly discriminative character, lacks protective measures for refugees and has complicated and limited legal proceedings which make migrants and refugees particularly vulnerable.

Regrettably, the actions of many public authorities, particularly at the local level, have been to acquiesce in the intensification of anti-Romani feeling. As a result, the rate and number of forced evictions of Roma have grown dramatically, and segregation and ghettoization in the housing field appears to have intensified and become entrenched in recent years. Forced evictions often involve acts of violence or violent threats against Roma. In their joint statement on 24 October 2007 the Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari underlined that, in Europe, there is also a tendency that market considerations and contempt toward persons regarded as “Gypsies” coalesce in the actions of municipalities carrying out urban renewal programs, in which the eviction of Roma from city center, and public view, is an active component of public policy.» This remark corresponds fully to the situation in Russia.

#### ***Situation in the Northern Caucasus***

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 situation in the Northern Caucasus region. The human rights abuses are particularly present in Chechnya, Daghestan, Kabardino-Balkaria, and Ingushetia (the situation in this republic has dramatically deteriorated over the last months).

#### ***Law enforcement bodies***

Moreover, law enforcement bodies, especially police, continue to be a source of human rights violations. Arbitrary detentions, torture, humiliating and cruel treatment, falsification of proves are still current issues. Effective mechanisms of control over the law enforcement structures are lacking. The situation of the penitentiary system is also preoccupying. The

[center.ru](http://center.ru)

international mission sent to Russia by FIDH in February 2008 to investigate legal norms in the fight against terrorism, reported grave abuses and violations of human rights within the fight against terrorism and extremism. People arrested following fabricated cases get long term sentences and have no functional remedies. For example, Zara Murtazalieva arrested in 2004 and condemned in 2005 to 9 years of prison and Zaurbek Talkhigov arrested and sentenced in 2003 for eight and a half years in prison still serve their sentences in calamitous conditions. Other fabricated processes took place against the individuals belonging to muslim «non-traditional» communities in different regions in Russia, for instance in Tatarstan. These cases are feeded notably by a perception of an islamic threat coming from the North Caucasus and the repressive campaigns led in the countries of Central Asia, notably in Uzbekistan.

#### ***Situation in the Russian army***

FIDH also notes with great concern that the extremely serious situation in the Russian army has not improved. An almost established system of hazing young soldiers who have been recruited for military service leads to their murder, torture, inhuman and degrading treatment and other human rights violations.

#### ***Recommendations:***

**FIDH requests the Council on Human Rights to recognize the gravity of the situation prevailing in the Russian Federation, and urge them to comply with human rights instruments on freedom of the association; and ask the authorities to inter alia:**

- **guarantee the physical and psychological integrity of human rights defenders and stop immediately all acts of violence and harassment towards them, stop all acts of defamation against human rights defenders, carry out a complete and impartial investigation on cases of attack and harassment;**
- **respect the Russian Election Code and international standards, to put an end to any harassment directed against the opposition political parties, independent candidates and independent observers;**
- **release immediately and unconditionally prisoners being kept for political reasons;**
- **ensure that counter-terrorism laws and their methods of application, comply completely with their regional and international human rights obligations and ensure that the principles and jurisprudence relative to derogations and**

**limitations of human rights are only applied in most exceptional circumstances;**

**- bring all violations of freedom of expression and the right of peaceful assembly to an immediate end;**

**- fight racism through the adoption of appropriate statutes and creation of efficient mechanisms;**

**- urge Russian authorities to put an end to all acts of violence and repressions against civilians, including torture, ill-treatment and the violation of the freedom of assembly in the region of Northern Caucasus;**

**- improve conditions of the military service and carry out an independent investigation into the widespread systematic practice of torture in the Russian army;**

**- invite the Human Rights Council's Special Procedures that have requested a visit, according to their terms of reference, including the SRSG on human rights defenders, the SR on the right to freedom of opinion and expression and the SR on freedom of religion or belief;**

**- More generally comply with the provisions of the Declaration on Human Rights Defenders, as adopted by the United Nations on 9 December 1998 and other international mechanisms.**

## MIGRANTS RIGHTS

FIDH has documented over the past year a series of worrying patterns of violations of the human rights of migrant persons throughout the world. The situation of undocumented migrants is particularly worrying. The triennial Congress of FIDH in Lisbon, in April 2007, provided an opportunity to mobilise its 155 organisations on combatting such violations. The following situations are those amongst the most recently documented by FIDH in its fact finding missions.

### *Migratory flows between Mexico and the United States of America*

FIDH is preoccupied by the human rights violations committed around the migratory flows which link Mexico to the United States of America, at various stages of their route.

#### *Migrants Interception*

In Mexico, members of forces abuse of the vulnerability of undocumented migrants, with a view to extort money from them. Many illegal acts are conducted, that include threats, beating, sexual harassment or rape of female migrants and kidnappings. The almost total impunity of these serious violations of migrants' human rights is an added layer of violations. Moreover, members of the civil society have been pressured and threatened when trying to denounce these situations or to support the migrants in their complaints.

In the USA, Border Patrol (B.P.) agents use verbal harassments, degradation, humiliation and intimidation along with unbridled showing of deadly force against border crossers. FIDH is concerned at the excessive use of armed force. The search for undocumented migrants had led to racial profiling and community insecurity. Furthermore, immigrants are not only caught by the B.P., but sometimes by U.S. citizens known as “migrant hunters”.

#### *Detention and Deportation Conditions*

Prison-like detention is the standard practice both in Mexico and in the United States.

In Mexico, detention is systematic when the Mexican authorities have doubts about the legal status of the migrant. Such detention is based on an administrative decision and can be indefinite. The detention conditions are unhealthy and at times there is a lack of food and water. The possibilities of making complaints or suggestions about detention conditions are limited.

Regarding deportation, the Mexican regulations and

practice do not provide for full opportunities to appeal against the removal. There are no sufficient and effective protection for refugee status seekers. Bilateral agreements of “voluntary” repatriation enable the National Migration Institute (INM) to perform massive deportations.

In the United States, the Bureau of Immigration and Customs Enforcement (ICE) applies a policy of quasi systematic detention of undocumented migrants and their families, which has created an explosive growth in ICE detention (in 2007, 26.500 persons a day were detained). The average length of detention is 2 or 3 months, but some are detained for years. Access to judicial review of the detention is not systematic. When it happens, access to a lawyer is almost systematically impossible. Migrants detained in ICE centers are also victims of abuses.

Various forms of “return” exist. Expedited removal orders are issued by immigration officers without legal assistance nor judicial review. Removal orders may ban the individual from returning to the U.S. for up to five years. Voluntary return, on the other hand, is a very important alternative to removal as migrants are not prosecuted and there are no penalties such as re-entry bans, but its application is very limited.

### *Undocumented and Other vulnerable Migrants in South Africa*

Even though both international (UN convention of the rights of all migrant workers and members of their families) and South African Law (2002 immigration Act and 1998 Refugees act) provide for a wide protection of human rights of migrants, undocumented migrants – who represent around 500.000 persons – are amongst the most exposed to human rights violations and have the least legal protection and support to defend their rights.

FIDH documented<sup>35</sup> the widespread and continuous problems faced by asylum-seekers and refugees throughout the asylum application process. On entry in South Africa, asylum-seekers may inform the immigration officer of their intention of applying for asylum, and should be granted a temporary permit, under which they have to report within two weeks to a refugee reception office in order to apply. However, many of them are not aware of this possibility or are afraid to use it (risk of harassment, arrestation, deportation, ...).

More generally, migrants face many obstacles through the length and costly process of immigration, which

<sup>35</sup> See FIDH fact-finding mission report “*Surplus People ? Undocumented and Other Vulnerable Migrants in South Africa*”, February 2008.

prevent them from conforming with some provisions of the immigration acts. A significant number therefore enter South Africa illegally. This situation exposes them to the risks of being exploited by smugglers and fellow migrants, of suffering physical hardship or being arrested by the police. Police harassment is frequent (bribes or sexual favours, extorting money or goods, inflicting verbal or physical abuse). Migrants run the risk of being arbitrarily arrested and detained, including for longer periods than authorised by law. Some migrants are also faced with hasty deportation at the country border, without adequate verification of their legal status and with police violence.

Beyond the borders and within the country. Some migrants are exploited at work (they are paid below the legal minimum wage, they work for longer hours than authorised by law, they have no or limited access to compensation for injuries, ...) and face difficulties to access health services and facilities (even for emergency cases), housing (many of them live in very precarious conditions) and education (even documented migrant workers, refugees and asylum-seekers are often unable to enrol their children in public schools on the claim that they do not have adequate documentation).

The lack of effective remedies, whether administrative or legal, is also a major factor preventing migrants from defending their rights, expose violation and seek redress.

These ongoing human rights violations are the result of the South African migration policy geared towards security concerns and population control. They are also due to the prevalent xenophobic feelings against Black Africans and based on the vision that migrants are linked with, or even responsible for, social ills and crimes.

### ***The draft “Returns” directive of the European Union***

FIDH is highly concerned by a draft EU Directive<sup>36</sup> on the return of undocumented migrants. As necessary as it may be, fighting illegal immigration has to be made in total respect with human rights. The ongoing harmonization of national migration policies into an EU Directive should be undertaken in

<sup>36</sup> Proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third country nationals (COM (2005) 0931-C6-0266-2005/0167(COD))

full respect of human rights. The “Returns” directive does not seem to go this way. Indeed,

- grounds for detention of undocumented migrants could be broader than what is authorized under international law, enabling detention without a removal order.
- The length of detention could be excessively long (drafts foresee a detention of up to 18 months), largely beyond the 8 weeks already characterised as “excessive” by the Commissioner for Human Rights of the Council of Europe.
- Removal orders may include a re-entry ban of 5 years, without clear possibilities to judicial recourse, should the banned migrant need to seek asylum? Such measure would also be inefficient as it would only discourage those who are seeking to enter the EU within legal routes, thus encouraging illegal immigration.