



Fédération Internationale des Ligues des Droits de l'Homme

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

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
DE LOS DERECHOS HUMANOS

الفدرالية الدولية لحقوق الانسان

FIDH Position Paper

**To the United Nations General Assembly
At its 64th Session**

October 2009

FIDH PRIORITIES FOR THE 64TH SESSION:

- **Islamic Republic of Iran**
- **Myanmar / Burma**
- **Support for Universal Jurisdiction**

A document by the International Federation for Human Rights (FIDH, www.fidh.org)
FIDH in New York at 666 Broadway, 7th floor – New York, NY 10012

For further information related to this report, please contact:
Claire Tixeire (ctixeire@fidh.org; Tel: 212-614-6420), FIDH Permanent Delegate to the United Nations

INTRODUCTION

In this Position Paper, the International Federation for Human Rights (FIDH) documents the priorities it believes the General Assembly (GA) at its 64th session, and in particular the Third Committee on Social, Humanitarian and Cultural Affairs, and the Sixth Committee on Legal Affairs, should not fail to firmly act upon.

The UN General Assembly, Reflecting Universality, Must Not Fail Human Rights and Justice

The weight of each GA resolution has a unique significance and legitimacy because the GA is the only organ of the United Nations in which all member nations have equal representation.

The resolutions that will be adopted this fall 2009 must therefore especially not fail to demonstrate the impeccable allegiance of the United Nations system to the highest norms it represents, and which include human rights, fundamental freedoms, and the fight against impunity.

FIDH deeply hopes that throughout the work of this 64th session, the General Assembly, through all of its member states, is led by an untarnished commitment to these core principles.

Condemning and Monitoring Serious Human Rights Violations Helps Prevent their Continuation and Is a Necessary Step to Peace

Human rights defenders from all regions of the world are observing the outcome of the GA sessions because the resolutions approved can prove to be a critical support to their work and advocacy at the national, regional, or international levels. Where they cannot be heard to echo the voice of victims of human rights violations, it is the role of the General Assembly to echo the voice of the voiceless.

In face of massive violations of international human rights and humanitarian law, when freedom to defend human rights is repressed, when people are killed or imprisoned solely for having exercised their rights, or when the most vulnerable victims never see justice, it is the duty of the international community to stand firm and work on putting an end to these situations through peaceful means, including through open debates.

In addition, in most instances of grave human rights violations, justice is the key to conflict

resolution. As UN Secretary General Ban Ki-moon has stressed, “*peace and justice are indivisible.*” There is in fact today no doubt that when grave human rights violations are perpetrated in complete impunity and remain unpunished, they will continue to be perpetrated, thereby creating a cycle of violence that prevents conflict-resolution.

Debating these issues at the General Assembly, and when necessary adopting resolutions, is yet only one of the means at the disposal of all nations to strengthen peace and the rule of law – but not one too many. We hope that every member state will give full significance to the mandate with which the General Assembly is highly entrusted.

About FIDH

Established in 1922, the International Federation for Human Rights (FIDH, www.fidh.org) is a federation of 155 non-profit human rights organizations in more than 100 countries. FIDH coordinates and supports affiliates’ activities at the local, regional and international level. FIDH strives to obtain effective improvements in the prevention of human rights violations, the protection and redress of victims, and the sanction of their perpetrators.

With activities ranging from research, fact-finding or observation missions, advocacy before national, regional and intergovernmental organizations, and litigation, FIDH seeks to ensure that all international human rights and humanitarian law instruments are duly respected by State parties. FIDH has developed strict and impartial procedures, which are implemented by world-renowned independent human rights experts. FIDH also represents victims of grave crimes before the International Criminal Court.

FIDH Recommendations for the 64th Session

FIDH requests the Third Committee to condemn the endless intensification of the human rights violations in **Iran**, whether it is with regards to death penalty, human rights defenders and other peaceful activists, or the repression against minorities, but in particular this year with respect to last June presidential election and its aftermath. In this regard, FIDH urges the Third Committee to appoint a Special Envoy of the Secretary General on Iran to assist the Secretary General in his efforts and reporting.

The Third Committee should also firmly condemn the everlasting and massive perpetration of human rights violations throughout the country of **Burma**. It is widely believed by experts that the crimes could constitute war crimes and crimes against humanity. Therefore, FIDH requests the Third Committee to call upon the UN Security Council to mandate an Independent Commission of Inquiry to investigate and qualify these violations. In addition, the GA resolution should promote national reconciliation but also request that the Security Council continues to monitor the situation and imposes an arms embargo. *[Please note that FIDH uses the name Burma and not Myanmar, imposed by the military regime. However, Myanmar and Burma refer to the same country.]*

Finally, FIDH would like to underscore how fundamental it is for the General Assembly to unconditionally support the **international justice system** it has spearheaded for the last sixty years. In all resolutions referring to international justice, the International Criminal Court, accountability and impunity, and in particular this year before the Sixth Committee on Legal Affairs the principle of **universal jurisdiction**, we demand that the General Assembly be as firm and as unequivocal as possible in reaffirming its own previous commitments on these issues, that is full support to the development of international justice, and to stand firm against any measure that would undermine the principle of universal jurisdiction.

GEOGRAPHIC PRIORITIES

Why Adopting Country-Resolutions on Iran and Burma?

The Iranian and Burmese authorities have, over the past few years, ceased full co-operation with the Human Rights mechanisms put in place by the United Nations, and have ignored their recommendations, while perpetuating violations on a rising scale.

There is no effective resort in either Iran or in Burma for victims of human rights violations – there is no independent judiciary to adjudicate upon these violations. Any person publicly denouncing the scandalous human rights violations perpetrated in these countries are liable to prosecution and extremely harsh sentencing.

The only available resort is before the international community, through the voices of the UN Member States.

Country Resolution vs. Universal Periodic Review

The Universal Periodic Review (UPR) in Geneva is an opportunity to review every member of the United Nations. However, the UPR process does not address the need for an imminent response in face of increasingly deteriorating situations, where human rights violations are massive and systematic. In addition, both processes are not exclusive, but rather complementary.

Promoting Human Rights and Reducing the Threats to Regional and International Peace and Security

Human rights are not the sole cause for concern with regard to Iran or Burma. Both country situations are currently on the UN Security Council's agenda, while a number of Member States have shown concerns regarding the damaging role that Iran and Burma are playing in the destabilization of peace and security in their respective region.

By defending respect for human rights in these countries, the international community intervenes at the crossroad of many crises. This is why pushing for a greater respect for human rights, democracy, and the rule of law in Iran and in Burma directly creates a more fertile environment for solving other preoccupying and underlying issues, including security and peace issues.

ISLAMIC REPUBLIC OF IRAN

Throughout 2009, the situation of human rights in the Islamic Republic of Iran has remained dire, and even further deteriorated, in the months preceding the June 2009 election, and afterwards.

The closure of FIDH member organization in Iran, the Defenders of Human Rights Center (DHRC) on 21 December 2008, marks a further step in the repression against human rights defenders and civil society activists in the country. Up to now, the Center – which was the main independent human rights NGO in the country, and often the unique recourse for victims of human rights violations – remains closed down, following an arbitrary decision by the authorities.

In addition, the offices of the Organization to Defend the Rights of Prisoners, an NGO founded by Emadedin Baghi and currently headed by lawyer Farideh Gheytrat, was sealed off by

security officials on September 9, 2009.

These repressive and arbitrary measures witness a total disregard for freedom of expression and association, and significantly weaken civil society, which was already operating in a highly risky context.

1 - Electoral violence and repression

FIDH and the League for the Defense of Human Rights in Iran (LDDHI) expressed their deepest concern regarding the repression in Iran following the presidential elections on 12th June 2009. Spontaneous protests to denounce the official result of the election have been violently repressed and thousands of people have been arbitrarily arrested, including many protesters, reformers, students, journalists and human rights defenders.

Unarmed civilians protesting in the streets have been killed during the peaceful demonstrations. Following a large-scale demonstration in Tehran on 20th June 2009, shots were fired at the crowd from the top of governmental buildings where paramilitary Bassidji militias were stationed. The Iranian authorities have acknowledged the death of 21 persons during these events. On 10 August 2009, the commission of inquiry conducted by Mehdi Karroubi and Mir Hossein Moussavi, two reformist candidates in the last election, presented a non-exhaustive list of 69 protesters killed by the authorities and the names of 245 persons still arbitrarily detained. During a press conference on 11 August 2009, the Iranian Spokesman of Judiciary finally admitted that 4000 persons had been arrested during the post-election events, declaring that only 300 protesters still remained in detention.

Five independent UN experts have voiced their grave concern regarding the use of excessive police force, arbitrary arrests and killings following the presidential election. They called upon the authorities to fully guarantee the rights to freedom of expression and assembly throughout the country. The UN High Commissioner for Human Rights also expressed her concern following reports of arbitrary arrests and illegal use of excessive force by semi-official forces and reminded the Iranian government of its obligations under international human rights law.

The vast majority of the persons arrested have been deprived of any contact with members of their family, and have not had access to a legal

counsel or necessary medical care.¹ In August 2009, a number of detained political opponents were brought before the revolutionary court, in unfair trials, accused of organizing the demonstrations following the presidential election, of participation in riots, action against national security, disturbing public order, vandalising public and government property and having ties with counter-revolutionary groups. This travesty of justice, without lawyers, aimed only at intimidating political opposition and showing to the public confession of major figures of the opposition acknowledging that there had been no electoral fraud but a general plot against the regime. Such a practice is common in Iran, and it has been demonstrated in the past that torture is being used to extract this type of confession.

Local sources have reported widespread use of torture and ill-treatment, including rape, against people arrested in the wake of the election. On 13th August 2009, the U.N. Special Rapporteur on torture said he had brought more than 300 cases of alleged torture and ill-treatment to the attention of Iranian authorities. In August 2009, FIDH and LDDHI received allegations about at least 3 cases of deaths in custody as result of torture. However, our organisations have not been able to verify those allegations due to the lack of access but the IRI Supreme Leader Ayatollah Khamenei effectively acknowledged that gross abuses had occurred in those centers, when he ordered the closure of Kahrizak Detention Center on 29 July. The recent arrests of peaceful protesters also constitutes a violation of the rights to freedom of peaceful assembly (Article 21 of ICCPR) and to freedom of expression (Article 19 of the ICCPR), to which Iran is a State party.

2 - Civil Society

A/ Human Rights defenders and other peaceful activists bear the brunt of repression

For the past few years, the repression and harassment of human rights defenders have continued unabated, with an ongoing repression against women human rights defenders, and an alarming increase of harassment against human rights activists belonging to minorities or working on minority issues. The peak of that trend was the

¹ FIDH and LDDHI submitted a list of 172 persons detained arbitrarily to the Working Group on Arbitrary Detention on 7 July 2009, and an updated list of 191 persons on July 16, 2009, [list of persons detained following the presidential elections](http://www.fidh.org/IMG/pdf/ARRESTEDFinal09.pdf), accessible at: <http://www.fidh.org/IMG/pdf/ARRESTEDFinal09.pdf>

closure, in December 2008, of one of the few independent human rights NGOs operating in the country and the arbitrary arrest of its administrative assistant in January 2009. With this closure, victims of human rights violations in Iran are left without access to any effective remedy.

On 21st December 2008, the headquarter of the Defenders of Human Rights Centre (DHRC) in Tehran, FIDH member organization in Iran, was violently searched without judicial search warrant and shut down by the police. The sealing of the office of DHRC, founded a few years back by five Iranian lawyers, including Ms. Shirin Ebadi, 2003 Nobel Peace Prize Laureate, took place without any judicial order, in violation of Article 17 of the Law for Activities of Parties, approved on 29 August 1981 by the Islamic Consultative Assembly, under which the only authority that may issue an order for the dissolution of civil or political groups is a court of law.

On 9 September, 2009, the offices of the Organization to Defend the Rights of Prisoners, an NGO founded by Emadedin Baghi and currently headed by lawyer Farideh Gheytrat, was sealed off by security officials.

On 14 January 2009, Ms. Jinus Sobhani, the administrative assistant of the Defenders of Human Rights Centre (DHRC), was arrested at her residence. She was eventually released on 11 March 2009, thanks to the national and international mobilization on her behalf. Mr Mohammad Ali Dadkhah, a prominent human rights lawyer and founding member of DHRC, was also arrested on 6 July 2009, and released on bail in September 2009. Mr. Abdolfattah Soltani, a lawyer at the Bar of Tehran and a founding member of the Defenders of DHRC, and Mr. Ahmad Zeydabadi, a political analyst and civil society activist, have been detained since 16 and 12 June 2009 respectively. Mr. Abdolfattah Soltani was first detained in section 240 of Evin prison, in Tehran, and was subsequently transferred to the Intelligence Ministry - run section 209, where some of the political prisoners are detained. He was released on bail on 26 August 2009. However, invited to Germany to receive the Nuremberg Human Rights Award, he was prevented from leaving the country on October 2, 2009 and his passport was confiscated. Ms. Jila Baniyaghoob, a well-known women's rights activist and journalist were arrested on 20th June in Tehran by plain-clothes officers of the Ministry of Intelligence. Ms. Baniyaghoob was subsequently released on 19th August 2009.

Those defenders released on bail are under the imminent threat of prosecution and condemnation to harsh prison sentences, which is a way to try and silence them.

B/ Continuous attacks on women's rights defenders

The Iranian legislation is deeply discriminatory in relation to women. A campaign was therefore launched by local activists in 2006, to demand the domestic legislation be amended in order to ensure equality between women and men.

The Observatory for the Protection of Human Rights Defenders, a joint program of the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT), has documented acts of harassment and legal proceedings against 54 activists involved in this "One Million Signatures" Campaign, repressed for their involvement in the Campaign since its creation in 2006. The increasing popularity of this movement unfortunately led to an increasing repression against its members.

For instance, on 29th January 2009, Ms. Alieh Eghdamdoust, sentenced to three years' imprisonment as a result of her participation on 12th June 2006 protest in Haft Tir Square, was incarcerated in Evin prison, Tehran. On 17 July 2009, Shadi Sadr, a human rights lawyer and prominent women's rights defender, was arrested while she was heading toward the Friday Prayers in Tehran University, by plain-clothes individuals who forced her into a car without identifying themselves or justifying their actions. She was released on bail on 28th July 2009.

On 13th April 2009, Ms. Ronak Safarzadeh, a member of the women's rights organisation *Azar Mehr* in Sanandaj, Iranian Kurdistan, and an active member of the "One Million Signatures" Campaign, was sentenced to six years' imprisonment for "spreading propaganda against the State" and for her alleged and unproven membership in the political opposition group *Pejak*. Ms. Safarzadeh was arbitrarily arrested and has been detained since the 9th October 2007 in Sanandaj prison following her participation in the International Childhood Day on 8th October 2007. Ms. Zeynab Bayazidi was arrested on the 9th of July and subsequently sentenced on 10th August 2008 to 4 years imprisonment in exile under charges of belonging to an illegal organization (the Kurdistan Human Rights Organization) and

for her involvement in the One Million Signatures Campaign.

C/ Arrests of students and journalists

On 24th February 2009, more than 70 students were arrested, following a protest at the Amir Kabir University in Tehran. The students, in a rare anti-government demonstration, were expressing their disagreement with the burial in the university area of the bodies of victims of the Iran - Iraq war. They were carrying banners complaining that their university was being turned into a cemetery and saying that the Evin prison had been turned into a university, an allusion to the high number of students imprisoned there. The protest was followed by clashes between protesters and security forces. Forty students were later released.

FIDH and LDDHI transmitted to the UN Working Group on Arbitrary detention a list of 49 students currently detained following the post-electoral repression.

Abdollah Momeni, spokesperson for the Iranian Alumni Association (Advar-e Tahkim Vahdat), was arrested at Mehdi Karoubi's campaign headquarters in June 2009. According to eyewitness reports, he was severely beaten and dragged by officers who arrested him without a warrant. He is still under detention.

Even before the crackdown of June 2009, independent journalists and media had been targeted by the regime. Four journalists, arrested and ill-treated during their detention in 2004, were sentenced in absentia (they left the country when they were released on bail) to severe sentences of imprisonment in February 2009: Rouzbeh Mirebrahimi to two years of imprisonments and 82 lashes, Omid Memarian to two years and a half of imprisonment and 100 lashes, Shahram Rafiezadeh to nine months and 20 lashes and Javad Gholam-Tamimi to three years and three months of imprisonment and 10 lashes. Mr. Adnan Hassanpour and Mr. Abdoulvahid (also known as Hiwa) Boutimar, two Kurdish journalists and active members of the Iranian civil society, were sentenced to death on 16th July 16 2007; their sentences were quashed on appeal and they are waiting for a second trial.

In July 2009, LDDHI transmitted to the relevant UN special procedures a list containing the names of 33 Iranian journalists arrested in the post-election wave of repression.

3 - Crackdown against religious and ethnic

minorities

The repression against activists belonging to ethnic and religious minorities is dramatically on the rise in Iran. Accused of terrorism, acting against national security, even treason without concrete evidence, they are sentenced in closed hearings, often after harsh torture.²

The repression against the Baha'i community has continued without regression. Six Baha'i leaders, members of the national coordinating group of Baha'i in Iran, the national-level coordinating group formed with the knowledge of the government to assist 300,000 member Baha'i community in Iran, were arrested in Tehran on 14 May 2008, by agents of the Ministry of Intelligence and are currently detained at the Evin prison in Tehran. A seventh person, acting as a secretary for the group, was arrested on 5 March 2008.

In the last few years, the repression against persons belonging to the Kurdish minority has been severe. Several political activists have been condemned to death and six of them are currently on death row. Accused of belonging to a Kurdish armed group PJAK, those persons are considered as "fighting God" (mohareb).

Furthermore, two Sunni religious representatives were killed in Kurdistan at the beginning of October and pressure against secular religious leaders is on the rise. The religious intolerance of the regime also has an impact on Shiite groups that do not share the official version of Islam promoted by the authorities. The religious group Aleyasin advocating in favor of religious pluralism has also been constantly under pressure. The pattern is the same regarding other minorities in Iran, notably the Baluch and the persons belonging to the Arabic minority of Khuzestan.

4 - Death Penalty³

Despite the increasing support for the United Nations General Assembly resolutions calling for a universal moratorium on the use of the death penalty, Iran continues to defy the international community by the high number of executions, in conditions that blatantly violate international

² Human rights situation in the Islamic Republic of Iran / FIDH / Briefing note - March 2009, accessible at: <http://www.fidh.org/Human-rights-situation-in-the>.

³ FIDH report on the death penalty in the Islamic Republic of Iran, entitled « A State Terror Policy », accessible at: http://www.fidh.org/IMG/pdf/Rapport_Iran_final.pdf

human rights standards. At least 346 persons were reportedly executed in 2008 (an increase in comparison to the number of executions carried out in 2007 - 317 persons). The numbers of executions is estimated around 196 since the beginning of 2009,⁴ LDDHI reports that 120 executions took place since the presidential election. However, these numbers are certainly below reality since there are no publicly available statistics on executions carried out in the country.

The Iranian legislation establishes notably the sentence of death for the following crimes (among others): a married person committing adultery must be stoned to death; heresy; killing a Muslim; drug trafficking (specific law on drug trafficking), armed robbery; rape; homosexual acts and fornication of a non-Muslim with a Muslim woman⁵. This situation blatantly violates article 6 of the ICCPR on the right to life, under which the death penalty must be restricted to the “most serious crimes”. That notion must not go beyond “intentional crimes with lethal or extremely grave consequences” and the death penalty “must not be imposed for sexual relations between consenting adults”.

For the first time since years, a journalist and civil society activist was executed, which marks a terrible setback for human rights in Iran. On 4 August 2008, Mr. Yaghoub Mehrnehad, a social activist in the south-eastern province of Sistan and Baluchistan and journalist for the Mardomsalari (Democracy) newspaper, was executed. Executions often take place “en masse”, in a move to terrorize the population. E.g., on 20th and 21st January 2009, 22 persons were hanged in Tehran, in Yazd and in Isfahan for murder and drug trafficking. On 30 July 2009, 24 people sentenced to death for drug trafficking were hanged in a prison where 20 traffickers were executed earlier, in July 2009.

In addition, Iran is one of the rare countries executing juvenile offenders. Mohammad Hassanzadeh, a 16 year-old Iranian Kurd, was executed on 10 June 2008 for a crime committed when he was 14. In July 2008, 138 juvenile offenders were known to be on death row in Iran, but the real numbers could be even higher. The application of the death penalty against those who

committed their offenses while under the age of 18 constitutes a gross violation of international law, regardless of the age the person has reached at the time of his/her execution.

Moreover, executions in Iran are usually carried out by hanging and in public. Public executions constitute a cruel, inhuman and degrading treatment. The UN Commission on Human Rights has repeatedly called upon States not to carry out capital punishment in public or in any other degrading manner. The draft Penal Code due for deliberation by parliament retains stoning and other capital punishments.

Recommendations

FIDH and LDDHI call upon the UN General Assembly to adopt a resolution appointing a UN Special Envoy of the Secretary General on Iran. Indeed, the Iranian judiciary shares responsibility for the repression carried out in the wake of the June 2009 election and still persisting today. Therefore the Iranian authorities, including the judiciary, cannot credibly and effectively investigate the recent and serious human rights violations. In addition, in view of the intense clampdown from the Iranian authorities on access to information about those violations, it appears indispensable to ensure that such a Special Envoy can contribute to the annual report of the Secretary General on the human rights situation in the Islamic Republic of Iran. The establishment of such a mechanism is all the more urgent that the various UN special procedures have not been allowed to visit the country since 2005.

In addition, this resolution should ask the Iranian authorities to :

- Release immediately and unconditionally all political prisoners, human rights defenders and civil society activists;**
- Conduct an impartial, independent and complete investigation into the serious human rights violations committed in the aftermath of the presidential elections. Those responsible for killings of protesters and acts of torture against political prisoners should be identified and brought before independent and impartial Tribunals. Iran should adhere to the Convention Against Torture (CAT) and ensure the conformity of Iranian legislation with CAT's provisions;**
- Put an end to the harassment, intimidation**

4 Figures provided by Amnesty International, accessible at : <http://www.amnestyinternational.be/doc/article15092.htm>

5 Articles 83§2, 513, 207, 185, 82§4, 110, 82§3 respectively of the Islamic Penal Law

and persecution of political opponents and human rights defenders and guarantee the rights to freedom of expression and association;⁶

- Eliminate, in law and in practice, amputations, flogging and other forms of torture and other cruel, inhuman or degrading treatment or punishments and to abolish, in law and in practice, stoning, public executions⁷ and in particular executions of juvenile offenders;⁸

- Eliminate, in law and in practice, all forms of discrimination and other human rights violations against women and ratify the CEDAW; eliminate as well all forms of discrimination against persons belonging to religious, ethnic, linguistic or other minorities;⁹

- Uphold the due process of law,¹⁰ put an end to arbitrary detentions by addressing the root causes of this phenomenon and guarantee the independence of the judiciary;¹¹

- Redress its inadequate record of cooperation with international human rights mechanisms by cooperating fully with all international human rights mechanisms, including facilitating visits to its territory of special procedures mandate holders and implementing the existing recommendations of human rights treaty bodies.

BURMA

1. International Crimes Continuously Perpetrated: The Need Today for an Independent Commission of Inquiry

For many years the International Federation for Human Rights (FIDH), the Alternative ASEAN Network on Burma (ALTSEAN-Burma), and the Burma Lawyers Council (BLC) have been

6 United Nations Press Releases on 19 June, 7 July and 13 August 2009.

7 Concluding observations of the Human Rights Committee: Iran (Islamic Republic of), 03/08/93. CCPR/C/79/Add.25.

8 Concluding Observations of the Committee on the rights of the Child (CRC), Islamic Republic of Iran, CRC/C/15/Add254, 31 March 2005.

9 Concluding observations of the Committee on the Elimination of Racial Discrimination : Iran (Islamic Republic of) 10/12/2003. CERD/C/63/CO/6.

10 Human Rights Committee Concluding Observations, op. cit.

11 E/CN.4/2004/3/Add.2, 27 juin 2003, accessible at : <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFramac7321e336031ba9c1256d790055d61e?Opendocument>

drawing the attention of the international community, in particular of the various United Nations (UN) bodies, to the widespread and systematic human rights violations occurring in Burma. Numerous reports document such violations and demonstrate that they constitute a State policy and are not isolated incidents.

According to all observers, the crimes are systematic and widespread and the perpetrators enjoy total impunity. As declared by the UN Special Rapporteur on the situation of human rights in Myanmar, “the culture of impunity remains the main obstacle to securing respect for human rights in Myanmar and to creating a favorable environment for their realization. Throughout his mandate, the Special Rapporteur has received reports of widespread and systematic human rights violations, including summary executions, torture, forced labor practices, sexual violence and the recruitment of child soldiers. These violations have not been investigated and their authors have not been prosecuted. Victims have not been in a position to assert their rights and receive a fair and effective remedy.

Recent developments show that the situation will not improve. In 2007, the so-called “Saffron Revolution” was repressed in blood by the junta. In 2008, the junta initially prevented international humanitarian help to access Burma and left hundreds of thousand of victims without assistance after cyclone Nargis severely hit the country. In late August 2009, the army broke the ceasefire signed 20 years ago with some ethnic armed opposition groups of the country by attacking the Kokang Region of Shan State. This attack followed the military campaign against the Karen ethnic minority in June 2009 which led to the displacement of more than 6,000 people.

Impunity has become the rule in Burma. Perpetrators of massive human rights violations are not prosecuted and the judicial system does not guarantee any independence or impartiality. In 2006, the United Nations Special Rapporteur on the situation of human rights in Myanmar described the widespread crimes committed in this country as being “*the result of a system under which individuals and groups have been allowed to break the law and violate human rights without being called to account*”. The situation has crossed a further step in 2008 with the adoption of a new constitution granting total immunity to the military for the actions they would take in the course of their activity. In its report on the situation in Burma to the General Assembly, the

Human Rights Council expressed in March 2009 its deep concerns “*that no effort has been made to investigate and prosecute the perpetrators of the violent crackdown on peaceful mass demonstrations of September 2007 and of the ensuing human rights violations, including enforced disappearances, arbitrary detentions, torture and ill-treatment.*”

In fact, there exists in Burma a prima facie case of international criminal law violations. Indeed, almost all the acts enumerated under Article 7 of the Rome Statute of the International Criminal Court (relative to crimes against humanity) have been repeatedly documented by independent sources, including NGOs and UN mechanisms. This is particularly true in Eastern Burma, where attacks against civilians by the State Peace and Development Council (SPDC) armed forces have been long documented by United Nations bodies.

As stressed by UN Secretary General Ban Ki-moon, “Peace and Justice are indivisible”. Today there is no doubt that when grave human rights violations remain unpunished, they continue to be perpetrated, thereby creating a cycle of violence that prevents conflict-resolution.

This is why FIDH believes that the General Assembly should not only stress these serious allegations of war crimes and crimes against humanity in its resolution, but also take this issue a step further and request the set-up by the United Nations of an Independent Commission of Inquiry. That Commission composed of independent human rights experts would be mandated with verifying allegations of such crimes, and assess whether they meet the constitutive elements of crimes against humanity and war crimes, as defined in international humanitarian and human rights law, including in the Rome Statute of the International Criminal Court.

2. The Need to Promote National Reconciliation and Condemn Grave Human Rights Violations

The political and human rights situation in the country remains of extreme concern. The release of some political prisoners by the junta in September 2009 is a positive step, but it is actually mainly a way to lift some of the international pressure off Burma in light of the upcoming 2010 elections. More than 2,100 political prisoners are detained in Burma today, and the military junta still refuses to engage in any

kind of dialogue with opposition parties, such as the National League for Democracy led by Nobel Peace Prize Daw Aung San Suu Kyi.

The junta alleges that the forthcoming elections will be the first multi-parties free elections held in the country since the 1988 coup. Instead, these elections will take place under the Constitution imposed last year by the regime through an undemocratic process. This Constitution will preserve and further entrench the military's grip on power and grant institutional immunity to the military. A civilian facade of the same regime will simply replace its current military form.

Daw Aung San Suu Kyi was condemned in August 2009 to 3 years of imprisonment and forced labor for having supposedly hosted an American citizen who intruded in her house, resulting in her ineligibility for the next elections. In the last months, people got arrested in Burma for the simple reason that they had pictures of Aung San Suu Kyi in their possession. As long as there is no willingness to proceed to a review of the Constitution and any dissenting voice ends into prison, the so-called “path to democracy” will be a process deprived of any legitimacy or credibility. These elements are clear indications that political opposition is still not tolerated by the military regime and that the upcoming elections will be nothing else than a masquerade.

Recommendations:

FIDH consequently calls upon the Third Committee of the UN General Assembly to adopt a resolution:

- 1) Requesting the UN Security Council to establish a Commission of Inquiry made of independent human rights experts to investigate human rights violations in Burma. The commission should have the mandate to:**
 - investigate and verify the allegations brought forward by various UN procedures and institutions and NGOs on human rights' violations perpetrated by the military regime in Burma;**
 - determine whether these human rights violations constitute crimes against humanity and war crimes under international law;**
 - document whether measures have been taken by the authorities to prevent the crimes, prosecute the perpetrators, and provide justice for victims;**
 - make recommendations on remedies, accountability and justice.**

2) Urging the UN Security Council to continue to monitor the situation in Myanmar, have regular briefings by the Secretary-General or his representative, and adopt a resolution that will strengthen the mandate of the Secretary-General, impose a global arms embargo, and be conducive to a meaningful and time-bound dialogue between the military, National League for Democracy led by Aung San Suu Kyi, and ethnic representatives.

FIDH further calls upon the Third Committee, in its resolution, to promote national reconciliation in Burma, outlining clear benchmarks and deadlines for reconciliation, and proposing efficient means of monitoring progress, with the assistance of the Secretary General. It should also request that the Special Adviser and the Special Rapporteur are able to fully and effectively implement their mandates. The resolution should also call for the release of all political prisoners and a revision of the 2008 Constitution as a first step towards the transition to democracy and a sustainable peace in the country.

SUPPORT FOR UNIVERSAL JURISDICTION

1 - The Essential Role of Universal Jurisdiction in the Fight against Impunity

In September 2009, at the request of the United Republic of Tanzania, acting on behalf of the Group of African States, a new item entitled “*The scope and application of the principle of universal jurisdiction*” was added to the agenda of the 64th session of the General Assembly. It will be considered by the Sixth Committee (Legal) (GA/10854).

The Explanatory Memorandum, which was annexed to the request, states that while the African Union “*fully subscribes to and supports the principle of universal jurisdiction within the context of fighting impunity as well as the need to punish perpetrators of genocide, crimes against humanity and war crimes, it is, however, concerned about its ad hoc and arbitrary application, particularly towards African leaders. The application of this principle has to be consistent with international law and the conduct of international relations.*” (UNGA, A63/237) Similarly, upon the adoption of the decision to add this item to the agenda, Rwanda stated that the African Group fully subscribed to the

principle of universal jurisdiction, as enshrined in international law. However, it maintained, the principle had been left open to abuse and often misguided political interest and it “*was imperative, therefore, that a clear universal mechanism be established to ensure the impartial and appropriate uniform application of universal jurisdiction.*”

Whereas FIDH welcomes the fact that there is agreement on the fundamental importance of the principle of universal jurisdiction as such, it takes issue with the assertion that the principle is applied arbitrarily, in particular against any particular continent. FIDH disagrees that there would be any need for a universal mechanism to ensure an “*appropriate uniform application*” of the principle. FIDH therefore appeals to the General Assembly to stand firm against any measure that would undermine the principle of universal jurisdiction as a crucial tool in the fight against impunity for serious human rights violations and international crimes such as genocide, crimes against humanity, war crimes, and torture.

2 - The Principle of Universal Jurisdiction: Firmly Enshrined in International Treaty and Customary Law

Universal jurisdiction gives a State the competence to prosecute an alleged perpetrator of serious human rights violations or international crimes, regardless of the location of the crime and the nationality of the victim or the perpetrator. The concept is based on the recognition that certain crimes are so heinous that they affect the international community as a whole and that all States have a duty to ensure that such crimes are investigated and, where necessary, prosecuted.

The obligation on States to seek out and prosecute those alleged to be responsible for grave breaches of international humanitarian law is a key component of the four Geneva Conventions of 1949. Moreover, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the recently adopted Convention on the Protection of all Persons from Enforced Disappearances also include the obligation to prosecute or extradite accused persons found on the territory of parties to the Convention, irrespective of where the crimes were committed.

Universal jurisdiction therefore covers serious or ‘core crimes’ under international law such as

genocide, war crimes, crimes against humanity and torture.

FIDH recalls that universal jurisdiction is not a tool of the International Criminal Court, and is not put in place to prosecute African leaders as stated by some States, but an independent and established principle of international law, complementing international justice mechanisms, when there is no real capacity or willingness to prosecute international crimes in the countries where they were committed.

3 - Universal Jurisdiction: A last Resort for many Victims

Universal jurisdiction is often a last resort enabling victims' access to justice when they cannot turn to justice in their own national jurisdictions. This can be the case when the State that has primary jurisdiction over the crimes is either unable or unwilling to investigate or prosecute such crimes. For instance, in the aftermath of a large-scale conflict, there are often no domestic judicial structures in place, or the judicial system might be burdened with huge numbers of cases preventing timely access to justice for many victims. In other cases, government officials may have been responsible for the human rights violations and they can sometimes block access to justice, even after they have left office. Such situations leave victims with no legal recourse. Moreover, where there is a lack of accountability for serious international crimes, the risk of large-scale crimes reoccurring is much greater.

Universal jurisdiction is a tool for victims who do not succeed in obtaining justice in their own country and who turn to another court abroad in order to seek justice and reparation. Cases based on the application of universal jurisdiction have already resulted in providing victims throughout the world with justice. For example, cases against perpetrators involved in the conflict in the former Yugoslavia, crimes against humanity committed in Argentina and Chile or the genocide in Rwanda have all led to convictions. Further, there are ongoing cases relating to events in Tibet/China, Gaza and the USA. In addition to providing justice to the victims, such judgments can also contribute to peace, stability, and security in the countries where the crimes occurred. Furthermore, cases based on universal jurisdiction have resulted in the opening of cases in national jurisdictions where these crimes were committed, such as in Argentina and Chile.

4 - The scope and the application of universal jurisdiction should comply with current international obligations

Universal jurisdiction is well defined by the international treaties mentioned above, and each national justice system should implement the principle of universal jurisdiction in conformity with these international legal standards and obligations, without there being any necessity for introducing any limitation to the scope and application of universal jurisdiction, which could be contrary to these standards.

Furthermore, as provided by Article 14(1) of the International Covenant on Civil and Political Rights "*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*" Further, the United Nations "Basic Principles on the Independence of the Judiciary" state that the "*judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*" Principle 2, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985). Consequently, any application of the principle of universal jurisdiction that would be influenced by a perceived need for consistency with "*the conduct of international relations*" would be impermissible. Similarly, any mechanism with the purpose of establishing a particular "*appropriate uniform application of universal jurisdiction*" would interfere with the judicial process and thus trespass on an area that belongs with the judiciary of each court in each country. (See further, Principle 4 of the Basic Principles on the Independence of the Judiciary)

Recommendations:

For the above reasons, FIDH urges the UN General Assembly to:

- Reaffirm the importance of the principle of universal jurisdiction in the fight against impunity for serious human rights violations and international crimes such as genocide,

crimes against humanity, war crimes, and torture;

- Recall that the principle of universal jurisdiction has been applied to cases from countries in various parts of the world;

- Stand firm against any measure that would undermine the principle of universal jurisdiction;

- Disallow any measure that would deter states to comply with their international obligations on the use of the principle of universal jurisdiction;

- Reject any measures that would aim at subjecting the principle of universal jurisdiction to other interests, such as the conduct of international relations;

- Bar any attempts at establishing a mechanism for purposes of setting up a uniform application of the principle of universal jurisdiction.