



Fédération internationale des ligues des droits de l'Homme

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Position paper

FIDH

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INTRODUCTION

On the occasion of the 2nd session of the UN Human Rights Council, the present position paper documents the priorities of the International Federation for Human Rights (FIDH), for which we would require the UN Human rights Council to act. The session should pursue three main objectives.

Evaluation of the human rights violations across the world

This session will be the first occasion, since March 2005, to debate the situation of human rights violations throughout the world, from both country and thematic perspectives. Such evaluation, at the core of the UN intergovernmental body's mandate, has indeed not been performed throughout the transformation of the UN Commission on Human Rights into the Human Rights Council. The requirement for such debate is however pressing, as throughout the reform, human rights violations have never ceased. FIDH further believes that such evaluation will strengthen the recognition of the role of UN special procedures, as essential independent and expert sources of information to pursue the evaluation.

Echo the voices of the victims

FIDH wishes that throughout the work of this session, members of the Human Rights Council will be led by an untarnished commitment to echo the voices of the victims of human rights violations, the voices of the voiceless. When freedom to defend human rights is repressed, when people are killed or imprisoned solely for having exercised their rights, we like to think we can turn to the international community to obtain condemnation. We hope that members of the HRC will hear these voices and give full significance to the protection mandate with which they are entrusted.

Pursue institutional building

The session will also be an opportunity to pursue the discussion around the creation of the Universal Periodic Review (UPR) and on the Review of the special procedures. As stated on numerous occasions, FIDH calls for States participating in these negotiations to be guided by the objective of strengthening their mandate to protect from human rights violations. This means, in practice, that the UPR should be action oriented, and performed on the basis of thorough reports from independent sources, including special procedures, treaty bodies and NGOs. As for the special procedures, FIDH believes that their mandates should be reinforced through an increased condemnation of States who refuse to cooperate with them, an increased possibility to interact with the different sessions of the UN HRC, and a nomination procedure

which strengthens guarantees against State interference.

Main recommendations

Following these objectives, the present report documents the human rights situations of some countries where FIDH considers that there has been a significant degradation, requiring a reaction of the United Nations.

We would hence require the Council to condemn *inter alia* the massive human rights violations that have occurred in ***Andijan, Uzbekistan***, and the repression that followed it; the post electoral violence in ***Ethiopia*** and the subsequent repression of freedom of expression; the grave human rights violations in ***Central African Republic***, currently analysed by the International Criminal Court; and the intensification of the repression of all forms of freedom of expression in ***Iran***.

FIDH also urges the Human Rights Council to maintain the different country mandates, as for each situation, the perpetuation of significant and grave human rights violations requires to do so. In particular FIDH calls for the maintaining of the independent expert on the ***Darfur***, and on the ***Democratic Republic of the Congo***, as well as of the full mandate of the OHCHR in ***Colombia***.

FIDH finally calls for the human rights situation in the ***People's Republic of China*** and in the ***Russian Federation*** to be thoroughly debated and acted upon.

From a thematic perspective, FIDH calls for the renewal of all the mandates that were to expire this year, in particular the mandate of the ***UN Special Representative on the Protection of Human Rights Defenders***. We also call for particular attention to be brought on States who repeatedly refuse to cooperate with UN special procedures.

AFRICA

1. SUDAN / DARFUR

FIDH calls upon the Human Rights Council to adopt a resolution condemning the serious violations of human rights and humanitarian law and urging Sudan to accept the deployment of an international peacekeeping mission in accordance with resolution 1706 of the United Nations Security Council.

Serious violations of human rights and humanitarian law committed in Darfur

The 3 year conflict has already led to the death of more than 200,000 people and the displacement of 2.5 millions in Sudan, Chad and Central African Republic. Despite the 2004 Ceasefire agreement and the recent signature of the Darfur Peace Agreement (DPA), the parties continue to kill and rape in total impunity and in violation of the international humanitarian law. As noted by the UN High Commissioner for Human Rights' Fourth Periodic Report on the human rights situation in Sudan of July 25, 2006, there has been « no evolution in the human rights situation in the Darfur ». The civilians continue to face daily attacks by the Sudanese forces, Janjawid and the different factions of the rebels groups. Humanitarian workers and AMIS soldiers are being attacked and killed. The conflict has now dangerously extended to Chad and Central African Republic. In addition, according to a recent UN report, children are being recruited by rebel groups, including the Sudan Liberation Army and opposition Chadian forces, Janjawid and Sudanese armed forces, to serve in their ranks.

The Human Rights Council has to send out a distress signal to all parties to the conflict who should immediately put an end to the violations of human rights and humanitarian law against civilians, humanitarian workers and AMIS forces.

The necessity to deploy an international peacekeeping mission in Darfur in order to protect Darfurians

After 3 years of conflict, FIDH considers that Sudan is unwilling and unable to protect Darfurians and opposes the recent sudanese proposal to send local troops in Darfur.

FIDH welcomes the adoption of resolution 1706 by the UN Security council calling for the deployment of an international peacekeeping mission in Darfur no later than October 1, 2006. FIDH strongly supports such a deployment and urges Sudan to consent to it.

Yet, while the United Nations Secretary General and the Security Council are trying to secure Sudan's consent to a transition to a UN operation in Darfur, the end of the AMIS mandate, due on September 30, 2006, might leave the population of Darfur without protection. It is therefore of utmost importance that AMIS mandate be renewed and strengthened until the effective deployment of an United

Nations international peacekeeping mission.

Consequently, FIDH urges the Human Rights Council to adopt a resolution :

- condemning the serious violations of human rights and humanitarian law
 - urging Sudan to accept the deployment of an international peacekeeping mission in accordance with resolution 1706 of the UNSC,
 - asking the AU Peace and Security Council to renew and strengthen AMIS' mandate to guarantee a better protection of the civilians until the deployment of an international peacekeeping mission,
 - renewing the mandate of the Independent Expert on the human rights situation in Sudan
-
- to ask all UN member states to take all diplomatic measures to secure Sudan's consent to a UN mission in Darfur in accordance with resolution 1706 of the UN security Council,
 - to urge the parties to the Darfur conflict:
 - to put an end to the violations of human rights and international humanitarian law against civilians, humanitarian workers and AMIS forces,
 - to respect the ceasefire agreements, the DPA and all UN resolutions,
 - to implement the recommendations contained in the Fourth Periodic Report of the United Nations High Commissioner for Human Rights on the human rights situation in Sudan of July 25, 2006.
-
- to call upon the Sudanese authorities to
 - withdraw their proposal to deploy their own troops in Darfur,
 - disarm its militias including the Janjawid,
 - re-engage in a political dialogue with the non signatories of the DPA,
 - hold accountable perpetrators of international crimes and serious violations of human rights and to fully cooperate with the ICC organs in accordance with UNSC resolution 1593 referring the Darfur situation to the ICC,
 - to respect regional and international human rights instruments ratified by Sudan.

2. ETHIOPIA

FIDH reiterates its deepest concern about the human rights situation in Ethiopia and notably the fairness of the pending trial of human rights defenders, journalists and political opponents in Addis Ababa, Ethiopia, arrested in the aftermath of the deadly clashes between police and protesters in June and November 2005.

Post electoral repressions

This trial follows repression of peaceful demonstrations to protest against alleged poll fraud during the multi-party national elections of May 2005 in June and November 2005, which led to the death of more than 80 people including unarmed protesters, students and children, hundreds of wounded and thousands of arrests. Several Special Rapporteurs of the United Nations sent urgent appeals to the Ethiopian authorities and expressed their deep concern about the killings of demonstrators. A few months later, in his annual report released in March 2006, Philip Alston, Special rapporteur on extrajudiciary, summary or arbitrary executions, regretted openly that the Government of Ethiopia had “*failed to cooperate with the mandate he has been given by the UN Commission on Human Rights*”.

Arbitrary trials

After several court appearances and the refusal of bail, 111 defendants, amongst the 131 originally charged, are currently facing trial for crimes including high treason, genocide, conspiracy to overthrow the government by means of armed struggle and outrage against the constitution and the constitutional order. According to the Ethiopian penal code, maximum sentences for these crimes range from 25 years imprisonment to the death penalty. Amongst the defendants are 76 individuals, including 3 human rights defenders, the former Chairman and founder of the Ethiopian Human Rights Council (EHRCO), FIDH member organisation in Ethiopia, 25 people having been charged *in absentia*, 4 political parties and six independent newspapers.

Concerned by the human rights violations committed during the June and November protests and the pending trial, FIDH and the World Organisation Against Torture (OMCT), in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, dispatched an international judicial observation mission to Ethiopia, to observe the trial of members of the EHRCO from February 21 to March 1, 2006. According to the information gathered by the Observatory delegation during the hearings February 2006, defence lawyers of some defendants boycotted the proceedings, complaining of being prevented from meeting their clients, or not being able to communicate with their clients in adequate conditions, thereby denouncing the violation of the rights of defence as provided by Article 20 and 21 of the Ethiopian Constitution and Article 14.3(b) of the ICCPR, providing for the rights of everyone charged with a criminal offence. Similarly, the rights of the defence were not fully respected, in that those amongst the defendants

who wanted to raise arguments before the Court in person were not allowed to do so.

Furthermore, the Commission of Inquiry set up by the Ethiopian Parliament in December 2005 and mandated to determine whether excessive force had been used by the State and whether human rights were violated during violent post-election clashes of June and November 2005, has not completed its work, despite its utmost importance in light of the pending trial. FIDH is also concerned about the composition and independence of this Commission, as five out of its eleven members have already withdrawn themselves from it.

FIDH considers these charges to be disproportionate to the nature of the events that occurred in the aftermath of the May 2005 elections. FIDH expresses its deepest concern about the fairness of this trial as it believes it to be a way to silence any political opposition to the current regime.

FIDH considers this treason trial as a striking example of the deteriorating human rights situation in Ethiopia. Serious violations of human rights have been noted along the pre-electoral period and are increasing. Although the pre-election campaign was reportedly sound and peaceful, the national authorities imposed additional restrictions on civil liberties, including freedom of the press and freedom of assembly. In 2004 and 2005, the crackdown on fundamental rights and freedoms - in particular freedoms of association, of expression and of the press - had taken the form of an increased institutionalisation and legalisation.

Illegal search, seizure and sweeping operations have grown in number in 2005 in violation of Article 26 of the Ethiopian Constitution and of human rights instruments ratified by Ethiopia, and notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter for Human and Peoples' Rights. Homes of members of opposition political parties were searched, their party offices broken into and property and documents taken by security forces. As of today, a large number of teachers and students were arrested and are still not accounted for. Since the beginning of 2005, several publishers of private newspapers and journalists have been arrested and denied bail. Other private newspapers are unable to publish because of the imposed censorship and the threat of prosecution against publishers. According to our information, people including prominent journalists, lawyers, businesspersons, human rights defenders and members and leaders of opposition parties are still being arrested and charged with serious crimes.

Human rights defenders

FIDH also strongly condemns the continuing repression of human rights defenders and is also extremely worried about the physical and psychological wellbeing of EHRCO's members. Indeed, since the second crackdown on mass protest, three of EHRCO's veteran staff have been forced into exile for fear of their lives. Several EHRCO

members have been arrested arbitrarily and held in detention for various periods of time.

Due to fear of retaliation by government agents, families and friends of victims have been reluctant to come to EHRCO's office and report violations of human rights. Even victims of arbitrary arrest and torture have been unwilling to speak about their sufferings for fear of further retribution. EHRCO is now operating in a very hostile environment.

Those allegations and the general situation in Ethiopia have been largely documented by the Special rapporteurs on Extrajudiciary summary or arbitrary executions, on the situation of Human Rights defenders, on freedom of expression, on torture and by the Working group on arbitrary detention in their annual reports. Yet, the answer of the authorities to their letters of allegation has remained largely unsatisfactory.

Hence, FIDH would like to make the following recommendations to the Human Rights Council:

- to condemn serious human rights violations committed by the government of Ethiopia,

- to call upon the United Nations to immediately establish an independent inquiry commission to investigate the human rights violations committed by security forces in Ethiopia in connection with the May 15, 2005 elections, of which the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment and a member of the Working Group on arbitrary detention should be a part,

- to call upon the Ethiopian authorities to:
 - guarantee fair trials to all defendants as defined in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) ratified in 1993 and Article 7 of the African Charter for Human and Peoples' Rights and notably to have adequate time and facilities for the preparation of their defence and to communicate with their lawyers,
 - to respect the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines),
 - refrain from applying the death penalty, to ratify the second Optional Protocol to the International Covenant on Civil and Political Rights which provides for the abolition of death penalty and respect the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (1984),
 - to effectively investigate the post-election clashes of June and November 2005 and whether armed police and troops who opened fire on the protesters used excessive force, in order to bring the perpetrators of human rights violations to

justice,

- to urge the Commission of inquiry to render and publish its report,
- guarantee in all circumstances the physical and psychological integrity of human rights defenders in compliance with international instruments, especially the Declaration on Human Rights Defenders adopted by the U.N. General Assembly in December 1998,
- guarantee, at all times, the freedoms of opinion and expression as well as the right to hold peaceful demonstrations and to political assembly, in compliance with the Ethiopian Constitution and the international and regional instruments ratified by Ethiopia and, notably the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR),
- to extend invitations to the UN Working Group on Arbitrary Detention, the Special Rapporteurs on Torture, and on Freedom of expression following the requests they have addressed to the Ethiopian government in 2002 and 2005.

3. REPUBLIQUE CENTRAFRICAINE

La FIDH recommande au Conseil des droits de l'Homme d'adopter une résolution condamnant les graves violations des droits de l'Homme commises en République centrafricaine (RCA).

Depuis septembre 2005, plusieurs rebellions se manifestent dans le nord-ouest du pays, avec notamment les attaques de Markounda, Bossangoa, Kabo, Bémal et Paoua revendiquées par l'armée populaire pour la restauration de la République et la démocratie (APRD). Ces attaques ont fait l'objet de sévères représailles des Forces armées centrafricaines (FACA).

Dans le nord-est du pays, les FACA sont aux prises avec d'autres rebelles centrafricains et tchadiens, les mêmes qui s'étaient fait connaître par leur tentative de coup d'Etat sur Ndjamen en avril 2006, soutenu par le régime de Khartoum. Cette situation a été condamnée par le Conseil de sécurité dans un communiqué en date du 7 juillet 2006.

La population civile est la principale victime de cette situation conflictuelle. Elle subit les assauts continus des belligérants, rebelles et loyalistes. Près de 60.000 réfugiés au Tchad et au Cameroun. Femmes, enfants et personnes âgées violés, enfants nés des viols, personnes atteintes du virus du Sida, personnes amputées, orphelins, perte d'un enfant, membres de la famille assassinés, sous-alimentation,... Nombreux sont ceux qui portent les stigmates de ce pays insécure. Atteintes dans leur intégrité physique et morale, les victimes souffrent doublement de leur stigmatisation au sein de la société centrafricaine et de l'indifférence générale quant à leur situation d'extrême détresse physique, sociale et économique. Les défenseurs des droits de l'Homme qui tentent de faire écho à cette situation dramatique sont l'objet de menaces et de harcèlements.

Il est à relever que la plupart des acteurs de cette nouvelle situation conflictuelle en RCA sont les mêmes que ceux présumés hauts responsables des crimes commis en 2002 et 2003 contre la population civile à l'occasion de la tentative de coup d'Etat du général Bozizé, démonstration probante des ravages de l'impunité. En effet, en avril 2006, la Cour de cassation a déclaré les juridictions centrafricaines "*incapables*" de mener des enquêtes et des poursuites contre les auteurs des crimes les plus graves commis sur le territoire centrafricain à l'occasion de la tentative de coup d'Etat et a renvoyé cette affaire devant la Cour pénale internationale, saisi de la situation en République centrafricaine depuis décembre 2004.

La FIDH appelle en conséquence le Conseil des droits de l'Homme à adopter une résolution

- condamnant les graves violations des droits de l'Homme commises en RCA
 - exigeant des partis en conflit le strict respect des dispositions internationales de protection des droits de l'Homme et du droit international humanitaire;

- exigeant des parties en conflit un cessez-le-feu immédiat;
- demandant aux parties en conflit de faciliter la circulation et l'activité des organisations humanitaires dans le nord du pays;
- demandant au Conseil de sécurité d'étudier la possibilité d'un déploiement d'une force onusienne d'interposition ou, à tout le moins, de contribuer au renforcement des troupes de la CEMAC agissant sur le territoire centrafricain avec pour mandat élargi de protéger la population civile

- demandant au gouvernement centrafricain
 - de tout mettre en oeuvre pour que les auteurs des crimes les plus graves soient poursuivis et jugés conformément aux dispositions internationales de protection des droits de l'Homme
 - d'inclure dans le projet de réforme du Code pénal et du Code de procédure pénale les dispositions du Chapitre IX du Statut de la CPI, relatif à la coopération entre les autorités centrafricaines et les organes de la Cour et de ce projet dans les plus brefs délais au Parlement;
 - de dénoncer l'accord bilatéral conclu avec les Etats-unis permettant d'empêcher tout transfert d'un citoyen américain devant la CPI;
 - d'améliorer les conditions de détention dans tous les lieux de privation de liberté, conformément aux dispositions internationales de protection des droits de l'Homme y afférant, notamment l'ensemble des règles minima des Nations unies pour le traitement des détenus;
 - de respecter l'intégrité physique et morale des défenseurs des droits de l'Homme, et plus généralement de respecter les dispositions de la Déclaration sur les défenseurs des droits de l'Homme adoptée en 1998 par l'Assemblée générale des Nations unies;
 - de mettre en oeuvre les recommandations du Comité des droits de l'Homme des Nations unies émises en juillet 2006;
 - plus généralement, de respecter les conventions internationales de protection des droits de l'Homme ratifiées par la RCA et d'harmoniser les dispositions législatives en conséquence;
- demandant au Procureur de la CPI saisi par le gouvernement centrafricain en décembre 2004 d'ouvrir une enquête sur la situation en RCA

4. REPUBLIQUE DEMOCRATIQUE DU CONGO

La FIDH recommande au Conseil des droits de l'Homme de renouveler le mandat de l'Expert indépendant sur la situation en République démocratique du Congo (RDC).

Tensions post-électorales

La FIDH souligne le climat d'extrême tension en RDC depuis la proclamation le 17 août 2006 des résultats du premier tour des élections présidentielles. Notamment, les 20 et 21 août, des affrontements violents ont éclaté dans la capitale Kinshasa entre partisans du président sortant, Joseph Kabila, et de son vice-président, Jean-Pierre Bemba. Cette situation fragilise le déroulement du processus démocratique et suppose une attention toute particulière de la communauté internationale dans la perspective du second tour de l'élection présidentielle prévue en octobre 2006.

Processus de paix et impunité

La FIDH constate par ailleurs que l'objectif de paix et de sécurité sur le territoire congolais dévolu aux acteurs nationaux et internationaux de la période de transition est loin d'être atteint. Malgré les tentatives de réunification de l'armée nationale et la présence des forces onusiennes de la MONUC, les violations massives des droits de l'Homme et du droit international humanitaire contre la population civile et en particulier les exécutions sommaires, les violences sexuelles contre les femmes utilisées comme arme de guerre, les pillages, sont quotidiens dans le pays, notamment dans sa partie Est. Le Conseil de sécurité des Nations unies dans sa résolution 1698 (2006) du 31 juillet 2006 se déclarait ainsi gravement préoccupé par "la présence de groupes armés et de milices dans l'est de la République démocratique du Congo, en particulier dans les provinces de l'Ituri, du Nord-Kivu et du Sud-Kivu, qui perpétuent un climat d'insécurité dans l'ensemble de la région".

La FIDH considère que cette grande insécurité de la population civile est d'autant plus inquiétante - en dépit des poursuites engagées par la Cour pénale internationale contre le seigneur de guerre, Thomas Lubanga, que l'impunité des auteurs des crimes annihilent tous les efforts de prévention et fait craindre le pire en cas de tensions post-électorales.

Attaques contre les défenseurs des droits de l'Homme et les journalistes

Enfin, la FIDH demeure particulièrement préoccupée par la récurrence des graves menaces et harcèlements contre les défenseurs des droits de l'Homme, le musellement de la presse et l'esprit de haine et de violence véhiculé par certains médias, qui contreviennent aux dispositions internationales de protection des droits de l'Homme ratifiées par la RDC et sapent l'Etat de droit, base d'une paix durable dans ce pays.

A cet égard, la FIDH souhaite rappeler qu'en 2005, deux défenseurs ont été victimes d'assassinat ou de tentatives d'assassinat, ainsi que plusieurs journalistes, du fait de leur

engagement en faveur de la démocratie, de l'Etat de droit et du respect des droits de l'Homme en RDC : **M. Pascal Kabungulu Kibembi**, secrétaire exécutif de l'association Héritiers de la Justice, et vice-président de la Ligue des droits de l'Homme dans la région des grands lacs, assassiné dans la nuit du 30 au 31 juillet 2005 ; **M. Polycarpe Mpoyi Ngongo**, l'un des principaux animateurs du Réseau national d'observation des élections, le RENOSEC, renversé par une voiture de la Police d'intervention rapide (PIR), qui a brusquement dévié de sa trajectoire pour le percuter, le 9 novembre 2005 ; **M. Franck Ngyke**, journaliste au journal *Référence Plus*, a été assassiné dans la nuit du 2 au 3 novembre 2005, à son domicile ; **M. Bapuwa Mwamba**, correspondant de plusieurs organes de presse, a quant à lui été assassiné le 8 juillet 2006.

Enfin, l'intégrité physique et psychologique de nombreux autres défenseurs ou journalistes, et de leurs familles, reste quotidiennement mise en péril, du fait d'une pression constante et multiforme de la part des autorités : menaces de mort, mauvais traitements ou actes de torture, arrestations et détentions arbitraires, actes de harcèlement et intimidations, campagne de diffamations,... Tel est notamment le cas des membres du Groupe Lotus à Kisangani, ainsi que de la Ligue des électeurs et de la Voix des Sans-Voix à Kinshasa.

La FIDH appelle en conséquence le Conseil des droits de l'Homme à

- renouveler le mandat de l'Expert indépendant sur la situation en RDC,
- demander aux autorités congolaises
 - de se conformer aux résolutions du Conseil de sécurité des Nations unies, notamment les résolutions 1493 du 28 juillet 2003, 1533 du 12 mars 2004, 1552 du 27 juillet 2004, 1565 du 1er octobre 2004, 1592 du 30 mars 2005, 1596 du 18 avril 2005, 1616 du 29 juillet 2005, 1649 du 21 décembre 2005 et 1654 du 31 janvier 2006, 1698 du 31 juillet 2006
 - de se conformer aux textes internationaux et régionaux de promotion et de défense des droits de l'Homme ratifiés par la République démocratique du Congo ;
 - de se conformer aux Accords de Paix de Lusaka et de Sun City ;
 - de restaurer l'Etat de droit et l'autorité de l'Etat sur l'ensemble du territoire en coordination avec la MONUC et dans le respect des droits de l'Homme ;
 - de procéder au désarmement complet des groupes armés, assurer leur démobilisation effective et leur réinsertion dans la vie civile ;
 - d'établir un registre national de détention légale d'armes et renforcer la lutte contre le trafic d'armes en provenance de l'étranger ; garantir que les individus démobilisés responsables d'actes criminels et de violations des droits de

- l'Homme soient traduits en justice.
 - d'assurer, dans la sérénité et de manière honnête et transparente, la tenue du deuxième tour des élections présidentielles;
 - de garantir l'intégrité physique et morale des défenseurs et plus généralement de garantir les droits des défenseurs des droits de l'Homme tels que définis dans la Déclaration sur les défenseurs des droits de l'Homme adoptée par l'Assemblée générale des Nations unies le 9 décembre 1998
- demander au procureur de la Cour pénale internationale d'élargir les charges retenues contre Thomas Lubanga et de poursuivre, quelle que soit leur niveau actuel de responsabilité, d'autres auteurs de violations graves des droits de l'Homme et du droit international humanitaire perpétrées en Ituri ou dans d'autres parties du territoire congolais.

AMERICAS

COLOMBIA

Durante el 2005 y el primer semestre de 2006, la violación y amenaza de los derechos humanos en el territorio Colombiano, desafortunadamente no ha cesado. Los asesinatos, torturas, amenazas y desapariciones forzadas contra la sociedad civil son alarmantes, así como los ataques a los defensores de derechos humanos.

La FIDH comparte las preocupaciones señaladas en el último informe de la Alta Comisionada para los Derechos Humanos sobre la situación de derechos humanos en Colombia del 20 de enero de 2006, en el que se subraya un aumento en las denuncias sobre violaciones a los derechos humanos atribuidos a miembros de la fuerza pública y particularmente al Ejército colombiano. Igualmente se denuncia la utilización de la tortura en interrogatorios de personas capturadas o detenidas, tratamientos crueles o inhumanos o degradantes por parte de miembros de la Policía, el Ejército y personal de centros de detención.

Su informe subraya también la utilización selectiva de la violencia contra grupos vulnerables, como los defensores de derechos humanos, sindicalistas, jefes comunitarios etc.

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

De otro lado, los nexos entre la Fuerza Pública y los grupos paramilitares persisten y los paramilitares están infiltrados en diversas entidades estatales, el informe de la Alta Comisionada hace parte también de las denuncias que pesan en este respecto.

Los paramilitares en proceso de “desmovilización” con el gobierno de Alvaro Uribe, continúan siendo los principales responsables de estas violaciones. A pesar de esto, el marco jurídico del proceso promovido por el Gobierno no asegura el desmonte del paramilitarismo, ni la reparación de las víctimas, sino por el contrario, asegura la impunidad de todos sus crímenes, pese a la condición prealable que el gobierno había señalado de exigir que estos debían cesar sus crímenes. En el primer semestre de 2006 ha sido evidente que los cabecillas paramilitares desmovilizados han mentido en sus declaraciones, no han entregado todos los bienes adquiridos ilícitamente, varios no se han entregado a las autoridades e importantes narcotraficantes han sido incluidos en la lista de paramilitares para beneficiar de las bondades del marco jurídico aplicable a los desmovilizados.

Persistencia de la impunidad y política de paz

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

Lo que en teoría es una ley diseñada para alcanzar la paz en Colombia, es en realidad una ley de amnistía para los paramilitares, y desconoce la obligación que tiene el gobierno Colombiano de investigar, juzgar y sancionar a los autores de crímenes y graves violaciones a los derechos humanos. Entre otros esta ley prevé que los paramilitares cumplan penas reducidas de 5 a 8 años, y no necesariamente en cárceles, por crímenes extremadamente graves como secuestro, matanzas, tortura y desapariciones, desconociendo de este modo el principio de justicia, pilar de toda sociedad

Si bien 30.944 paramilitares se habrían desmovilizado entregado armas y reinsertado a la vida civil, continúan realizando ataques a la población civil, secuestros y desapariciones. La situación de las víctimas continúa siendo una incógnita; y sus derechos de verdad y reparación son desconocidos. La suerte de desaparecidos (más de 8000) y secuestrados (500) no ha sido resuelta, ni es garantizada en la ley, igualmente no está prevista la restitución de tierras a las poblaciones desplazadas.

La Corte Constitucional el 18 de mayo de 2006, en su sentencia C-370 reconoce el carácter constitucional de la ley 975 de 2005, pero declara inconstitucionales importantes disposiciones de la ley por considerarlas violaciones al derecho de las víctimas a la verdad, la justicia y la reparación. No obstante, el gobierno el 29 de agosto de 2006, publicó el proyecto de Decreto reglamentario de la ley 975 de 2005 y que, según el Ministro del Interior “busca... estricta sujeción a la sentencia de la Corte Constitucional sobre la “Ley de Justicia y Paz””. Sin embargo la FIDH encuentra preocupante varias disposiciones de ese proyecto, que por lo demás no se ajustan al pronunciamiento de la Corte Constitucional.

Por ejemplo, este proyecto deja abierta la posibilidad para que casi cualquier narcotraficante pueda hacer parte del proceso de desmovilización y se beneficie de su marco jurídico, declarando que todos los hechos delictivos, incluyendo el tráfico de estupefacientes, “se entenderán cometidos con ocasión de su pertenencia al [grupo armado]” (art. 3). Este decreto deja libre a la interpretación judicial, la posibilidad de descontar de la pena impuesta, el tiempo pasado en San José de Ralito, aspecto que había sido expresamente rechazado por la sentencia de la Corte Constitucional. Igualmente el artículo 17 del proyecto, impone la necesidad de una sentencia judicial para poder revocar los beneficios otorgados por delitos que los paramilitares “olviden” confesar y si el delito es lo suficientemente “grave que tenga relevancia... para el esclarecimiento de la verdad sobre el accionar del respectivo bloque o frente”. De la misma forma, el mencionado decreto deja un amplio margen para burlar la entrega de bienes, ya que limita la obligación de reparar económicamente a sus víctimas, tal y como lo había ordenado la Corte Constitucional, y se permite al desmovilizado conservar una parte de su patrimonio para garantizar “una vida digna... que le permita vivir adecuadamente... que deberá evaluarse y determinarse atendiendo las circunstancias particulares de cada caso

individual”.

Adicionalmente, el Gobierno promulgó también el 29 de agosto de 2006 el proyecto de Decreto que reglamenta la Ley 782 de 2002, llamada “Ley de Orden Público”, mediante el cual se le devuelve a los grupos armados el carácter político, impidiendo la extradición para sus miembros, ya que ésta es prohibida contra delitos políticos y beneficiando numerosos narcotraficantes que se han afanado, y conseguido, figurar como miembros del paramilitarismo.

La FIDH urge adoptar un Decreto reglamentario que respete en su integralidad la decisión de la Corte Constitucional y que garantice la búsqueda de la verdad, la justicia y la reparación de sus víctimas.

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

La FIDH y sus organizaciones miembro en Colombia insisten una vez más en la necesidad de llevar a cabo una verdadera política de paz que involucre todos los actores del conflicto; y en el cual se busque principalmente la libertad, la justicia y la reparación para las víctimas. La benevolencia que queda consagrada en los diferentes instrumentos jurídicos expedidos por el Gobierno, contrasta con la verdad a medias que se les exige a quienes se acogen a ellos y las mentiras que han salido a la luz pública durante primer semestre de 2006 por parte de desmovilizados, dejando en claro un desequilibrio que de ninguna conduce al fortalecimiento del Estado de Derecho ni de la democracia.

Situación de los defensores de derechos humanos

En el primer semestre de 2006 se continuó presentando una utilización selectiva de la violencia, se continuaron realizando amenazas, detenciones arbitrarias, asesinatos y desapariciones forzadas de defensores de derechos humanos, sindicalistas, líderes sociales, dirigentes campesinos e indígenas.

El 17 de mayo de 2006 las organizaciones Corporación Colectivo de Abogados “José Alvear Restrepo” (CCAJAR), Compromiso, Organización Nacional Indígena de Colombia (ONIC), Consultaría para los Derechos Humanos y el Desplazamiento (CODHES) y Etnias de Colombia recibieron un mensaje amenazante, acusándolas de apoyar a los movimientos de guerrilla, varias de las cuales ya habían recibido otro mensaje similar el 8 de mayo de los corrientes.

La FIDH encuentra extremadamente preocupante que durante las semanas anteriores a las elecciones presidenciales, se presentó una ola de hostigamientos y amenazas contra los defensores de derechos humano, las cuales continuaron incrementándose en el mes de agosto de 2006 (ver las 2 cartas abiertas al Presidente Uribe del Observatorio para la Protección de los Defensores de Derechos Humanos del 11 de agosto de 2006 y del 23 de agosto de 2006). Entre el 2 y el 4 de agosto se realizaron

en la ciudad de Bogotá varios allanamientos sin orden judicial, a sedes de organizaciones sociales y de defensa de los derechos humanos, entre ellas el Comité Permanente por la Defensa de los Derechos Humanos (CPDH), el Sindicato Nacional de Trabajadores de la Industria de Alimentos (SINALTRAINAL) y el Semanario *Voz*, Igualmente, el 4 de agosto varias organizaciones recibieron correos electrónicos amenazantes.

A pesar de la preocupación por el tema señalada por el Presidente Uribe durante su discurso de posesión, la situación de los defensores de derechos humanos está lejos de mejorar, y las fuerzas armadas y la justicia Colombiana en algunos casos tienen una actitud neutra o complaciente frente a esta situación.

Teniendo en cuenta estos hechos, la FIDH y sus organizaciones miembros en Colombia urgen al Consejo de Derechos Humanos de Naciones Unidas a adoptar una Declaración del Presidente sobre la situación de los Derechos Humanos en Colombia en la que:

- Se corrobore plenamente el mandato e la Oficina del Alto Comisionado por los Derechos Humanos en Colombia tanto en su labor de asesoría como de observación de la situación de derechos humanos en el país.
- Se invita a la Alta Comisionada para que presente públicamente en las sesiones del Consejo el informe de su trabajo en Colombia.
- Se exija al gobierno de Colombia levantar la reserva del art. 124 del Estatuto de Roma, para que todos los crímenes de guerra que cometen todos los grupos armados en Colombia puedan ser investigados y juzgados en la CPI.
- Se inste al Fiscal General de la Corte Penal Internacional a abrir una investigación sobre Colombia, teniendo en cuenta las diferentes comunicaciones que ya reposan en su oficina, incluyendo una presentada por la FIDH.
- Se reclame del gobierno colombiano el reconocimiento claro de la labor legítima de los defensores de derechos humanos y del deber de todas las autoridades en todos los niveles de protegerles y de apoyar su labor.
- Se acate a cabalidad la sentencia C-370 de 2006 de la Corte Constitucional y se reglamente la Ley 975 de 2005 según lo dispone la misma.
- Se revise la política de seguridad democrática a la luz de las obligaciones internacionales en materia de derechos humanos y de derecho internacional humanitario.
- Aceptar el pedido de invitación del Grupo de trabajo de Naciones Unidas sobre detenciones arbitrarias y de la representante especial del Secretario General sobre los defensores de Derechos Humanos, organizando su visita prontamente y según sus propios términos de referencia.
- Se tomen acciones concretas para investigar, juzgar y sancionar los crímenes cometidos y para

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

ASIA and the MIDDLE EAST

1. LIBAN

En dépit de l'adoption de la résolution 1701 par le Conseil de sécurité des Nations unies et l'instauration d'un cessez-le-feu, le 14 août 2006, la FIDH et ses organisations membres et partenaires au Liban, l'Association libanaise des droits de l'Homme (ALDHOM), le Mouvement SOLIDA (Soutien aux Libanais détenus arbitrairement) et Frontiers Center considèrent que la situation des droits de l'Homme au Liban demeure préoccupante. Après plus d'un mois de conflit au cours duquel près de 1100 civils libanais et environ 40 civils Israéliens ont trouvé la mort et de nombreuses infrastructures civiles libanaises ont été détruites par l'armée israélienne, une partie importante de la population se trouve confrontée à d'énormes difficultés.

Violations du droit international humanitaire: violation du droit à la vie et recours à des punitions collectives.

A plusieurs reprises et notamment à l'occasion de la session extraordinaire du Conseil des droits de l'Homme le 11 août 2006, la FIDH et ses organisations membres et partenaires au Liban ont appelé les parties au conflit au respect inconditionnel des conventions de Genève. Elles ont par ailleurs condamné avec la plus grande vigueur les opérations militaires israéliennes qui frappaient sans interruption le Liban depuis le 12 juillet, et de la même façon, ont dénoncé avec force les attaques à la roquette par le Hezbollah contre des civils israéliens. Nos organisations tirent les conclusions de la décision du Conseil des droits de l'Homme d'envoyer une mission d'enquête internationale et les complètent en demandant une enquête sur les attaques à la roquette contre des civils israéliens.

Du 11 au 15 août 2006, la FIDH avec deux organisations partenaires, le Réseau euro-méditerranéen des droits de l'Homme et la Plateforme Euromed, a mandaté une mission qui a pu à son retour faire plusieurs constats.

Au regard des informations et observations recueillies sur le terrain, la mission a pu conclure que l'ampleur des destructions constatées dément l'affirmation des autorités israéliennes selon laquelle ses opérations étaient toujours en lien avec des nécessités militaires. A tenir pour exacte cette affirmation, cela reviendrait à considérer, compte tenu encore une fois de l'étendue des destructions, que tout objectif civil a un lien, fut-il ténu, avec un objectif militaire. L'action de l'armée israélienne traduisait, en fait, une confusion volontaire entre objectifs civils et militaires qui explique les destructions infligées.

Dans ces conditions, les avertissements délivrés à la population civile (par voie de tracts) s'apparentaient davantage à une mesure d'intimidation qu'à une mesure de sauvegarde.

Les bombardements de villes et de villages par les deux parties au conflit a constitué un ciblage des populations civiles. Ces exécutions de civils constituent une violation

grave et flagrante du droit international humanitaire au regard de l'article 3 de la Quatrième Convention de Genève sur la protection des civils en temps de guerre, et sont qualifiables à tout le moins de crimes de guerre en vertu de l'article 8(2)(a) du Statut de Rome portant création de la Cour pénale internationale, engageant la responsabilité pénale internationale de leurs auteurs.

Le bombardement des voies de communication du sud au nord du territoire libanais et de camions immobilisés ou se déplaçant sur des routes libanaises qui ont y compris frappé plusieurs convois de civils fuyant les régions les plus touchées ainsi que des véhicules de secours ont rendu l'acheminement de l'aide humanitaire à travers le pays très difficile voire impossible dans de nombreux villages du Sud Liban. Ces bombardements ont également conduit à la destruction de nombreuses infrastructures civiles libanaises incluant des industries alimentaires, des centrales électriques, des hôpitaux et des dépôts de carburant, ce qui constitue au regard du droit international humanitaire, autant de punitions collectives perpétrées par l'armée israélienne à l'encontre des populations civiles libanaises, en violation de l'article 33 de la Quatrième Convention de Genève. Elles relèvent de la qualification de violation grave reconnue par l'article 147 de la Quatrième Convention de Genève et constituent à tout le moins un crime de guerre en vertu de l'article 8(2)(a)(iv) du Statut de Rome qui reprend la coutume internationale.

Nos organisations condamnent fermement l'envoi massif de bombes à sous-munitions par l'armée israélienne sur le Sud Liban au cours des trois derniers jours de conflit. Selon les informations du UNOCHA, 100 000 de ces bombes n'auraient pas explosé et seraient dispersées à de multiples endroits dans le Sud Liban. L'utilisation de ce type de munitions dans des régions peuplées fait encourir un danger considérable aux populations civiles et ce, à long terme. « Le fait de causer intentionnellement de grandes souffrances et de porter des atteintes graves à l'intégrité physique ou à la santé » des populations civiles est considéré comme une infraction grave au regard de l'article 147 de la Quatrième convention de Genève.

Entraves aux droits à un niveau de vie suffisant, à la santé et au travail.

La crise humanitaire ouverte par la guerre n'est pas terminée avec le cessez-le-feu. Des centaines de milliers de personnes n'ont plus d'habitations, les infrastructures nécessaires à la vie quotidienne (eau, électricité, etc) doivent être reconstruites et les besoins sanitaires demeurent très importants. La vie économique du Liban est lourdement atteinte par les effets de la guerre.

Or, la mise en oeuvre de la reconstruction du Liban (entre autres, reconstruction des habitations privées, des infrastructures civiles ainsi que la relance économique) a été sérieusement hypothéquée par le maintien du blocus israélien sur le Liban. Comme l'a déclaré le Secrétaire général des Nations unies, le 4 septembre 2006, l'embargo israélien « est particulièrement destructeur à un moment

où le Liban tente de se reconstruire et où il a besoin d'importer des matériels et de développer son commerce. »

Le blocus israélien sur le Liban levé le 7 septembre 2006 (à l'exception des frontières terrestres avec la Syrie) a constitué une violation de l'Article 1er du Pacte international relatif aux droits économiques, sociaux et culturels (PIDESC), selon lequel « tous les peuples ont le droit de disposer d'eux-mêmes. En vertu de ce droit, [...] ils assurent librement leur développement économique, social et culturel ».

Dans cette situation de blocus aux répercussions économiques lourdes, la population libanaise s'est vue privée de nombreux droits garantis par les Conventions internationales et en particulier, le PIDESC. Le Liban dont l'économie repose dans une proportion importante sur le tourisme (10% du revenu national) et le commerce a été, du fait de la guerre et ensuite du maintien du blocus, privé de rentrées importantes. L'agriculture qui se concentre à 60% dans la Bekaa et le Sud, les deux régions qui ont été le plus systématiquement bombardées, est sinistrée. Une partie non négligeable de la population libanaise a vu ses revenus fortement diminués et ne jouit ni de son droit au travail ni d'un niveau de vie suffisant.

Les bombardements israéliens particulièrement violents dans le sud du pays ont occasionné la destruction de nombreuses habitations et ont mené pendant les opérations militaires, au déplacement de près d'un million de personnes. A l'heure du retour, nombre d'entre elles avaient perdu leur maison et sont privées de leur droit à un logement adéquat, garanti par l'article 11 du PIDESC.

Alors que l'on dénombrerait plus de 3500 blessés à l'issue du conflit, l'acheminement difficile des secours et de l'aide humanitaire pendant les opérations militaires, en raison notamment des entraves à la circulation des convois de secours et une stricte limitation des corridors humanitaires, du fait de l'armée israélienne ainsi que la destruction d'hôpitaux en violation flagrante des articles 17, 18, 20 et 21 de la Quatrième convention de Genève ne permettent pas à la population libanaise d'accéder aux soins dont elle a besoin.

Recommandations

La FIDH, l'ALDHOM, Frontiers Center et SOLIDA appellent le Conseil des droits de l'Homme à adopter une résolution qui, *inter alia*,

- condamne les violations du droit international humanitaire et des droits de l'Homme par toutes les parties au Liban et en Israël.
- demande à Israël de poursuivre son retrait du Liban jusqu'à parvenir à un retrait total dans les plus brefs délais.
- exige la poursuite des auteurs des crimes de

guerre, quels qu'ils soient, afin qu'ils soient sanctionnés.

- exige que le droit à la réparation pour les victimes soit assuré.
- appelle au soutien à la société civile libanaise afin qu'elle puisse continuer à enquêter sur les crimes de guerre commis.
- appelle la communauté internationale à prendre toutes les mesures nécessaires pour assurer la reconstruction du Liban.

2. ISLAMIC REPUBLIC OF IRAN

FIDH and the Ligue de Défense des Droits de l'Homme en Iran (LDDHI) express their deep concern regarding the deterioration of the human rights situation in Iran.

Freedom of expression

Over the past months, the Iranian government has intensified its repression of human rights defenders¹.

On 12 June 2006, a peaceful gathering in Tehran, organized by representatives of women's and students' rights NGOs to protest against discrimination against Iranian women, was violently repressed by the police. Many of those attacked by the police were women and students and several dozen activists were arrested and taken to unknown locations. On 13 June 2006, the Minister of Justice stated that 42 women and 28 men had been arrested and detained in the Evin prison in Teheran for organizing an illegal gathering. According to information received by FIDH and LDDHI, one of those arrested, Mr **Ali-akbar Moussavi Khoini**, is still detained.

On 31 July 2006, Mr **Akbar Mohammadi**, a student activist, died in custody in the Evin prison, following a hunger strike. Mr Akbar Mohammadi had been detained since 1999 for his participation in peaceful student demonstrations, and was serving a 15-year sentence. According to information received and documented by FIDH and LDDHI, the trial of Mr. Mohammadi was characterized by numerous violations of the right to a fair trial. Reliable sources have reported his ill treatment whilst in custody, and the circumstances of his death remain unclear. The authorities have failed to conduct an investigation into his death.

On 3 August 2006, the Ministry of the Interior declared the *Defenders of Human Rights Centre* (DHRC), a member organisation of FIDH, to be an illegal organization and threatened those who continued its activities with prosecution. The DHRC, co-founded in 2002 by Mrs **Shirin Ebadi**, Iranian lawyer and winner of the Nobel Peace Prize in 2003, provided legal advice to dissidents, journalists and students facing prosecution for exercising fundamental rights. Since its creation, its members have been subjected to repeated acts of intimidation and harassment by the authorities.

On 16 July 2006, the Revolutionary Court of Tehran sentenced Mr **Abdolfattah Soltani**, lawyer and founding member of the DRHC, to 5 years imprisonment on charges of disclosing classified information, in connection with his role as defence lawyer in the case of Ms. Kazemi, an Iranian-Canadian photographer who died in 2003 following torture and ill treatment in custody. Mr Soltani

had called into question the fairness and independence of her trial. Mrs. Shirin Ebadi was summoned on 12 January 2005 by the Revolutionary Public Prosecutor's office, and threatened with arrest and prosecution. No reasons were given for the summons. Mr **Nasser Zarafchan**, lawyer, was arrested in August 2002 and sentenced to 5 years imprisonment in connection with statements made about the regime's role in the murder of intellectuals in 1988. He has been denied access to medical treatment following severe illness and his requests for medical leave have been blocked by the Chief Prosecutor of Tehran. He remains in detention despite his deteriorating health.

The Special Representative of the Secretary-General on human rights defenders has raised serious concerns about the restrictions on human rights defenders imposed by the Government, and in particular cases of arrest and alleged torture and ill-treatment of defenders in custody and during detention².

The situation in respect of political prisoners and prisoners of opinion has severely deteriorated. A hunger strike movement is developing in Iranian prisons. NGOs are not permitted to visit these prisoners and their families often fear contacting NGOs, with the result that dozens of individuals are detained without outside knowledge of their identities.

Valiollah Feyze-Mahdavi was sentenced to death following a trial in which he was denied access to a lawyer, in 2000 for supporting a Mujahedin organisation. His death was announced on 6 September 2006. He had been hospitalised, following a 9-day hunger strike in protest against the conditions of his detention, although it has been reported that the authorities claim he committed suicide. His death raises more general concern coming within 5 weeks of that of another prisoner, human rights defender **Akbar Mohammadi**, on July 30. These two deaths raise serious questions about the treatment of prisoners and call for urgent independent investigations.

Several journalists and web-loggers remain in prison. Mr **Mojtaba Saminejad**, a web-logger and student at the Tehran University, received a two-year prison sentence in June 2005 for "insulting the Supreme Guide". In July 2005, he was sentenced to a further ten months in prison for incitement to immorality. In January 2006, Mr **Arash Sigarchi**, journalist and blogger, was sentenced to three years in prison for "insulting the Supreme Guide" and "propaganda against the regime" and imprisoned several days later. Suspended sentences are also often used to silence journalists.

Mehrdad Ghassempfar and **Mana Neyestani**, were detained and released on bail. Their trials will take place

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

² Report submitted by the Special Representative of the Secretary-General on human rights defenders, *Hina Jilani - Compilation of developments in the area of human rights defenders*, CHR, 62nd Session, 6 March 2006, E/CN.4/2006/95/Add.5, §§ 789

on 17 September 2006. **Roozbeh Mirebrahimi, Omid Memarian, Shahram Rafizadeh and Javad Golam-Tamimi** were arrested in 2004 and then released on bail. Their trials will take place on 28 October 2006.

Mr Akbar Ganji, journalist at the daily newspaper *Sobh-e-Emrooz*, was released on 18 March 2006 after serving a sentence of six years of imprisonment on charges of undermining national security and spreading propaganda against institutions of the Islamic Republic. During the last period of his detention he had been held in solitary confinement at the Evin Prison and denied access to necessary medical treatment.

The Iranian authorities continue harassment of trade unionists. Five trade unionists were sentenced to imprisonment on 9 November 2005: **Mr Mahmoud Salehi** (5 years), **Mr Jalal Hosseini** (3 years), **Mr Mohsen Hakimi** (2 years), **Mr Borhan Divangar** (2 years) and **Mr Mohammed Abdipoor** (2 years). They were charged with association with the banned political association Komala.

Mr Mansour Osanloo, Chairperson of the public transportation union *Sherkat Vahed*, was released on 9 August 2006, following over seven months of detention at the Evin Prison, in Tehran. He had been arrested on 22 December 2005 for forming an "illegal union". 12 other leaders of the union were arrested in January 2006 for having announced a strike. They have also since been released.

Several students remain in prison in connection with the protests of 1999, including: **Mehrdad Lohrasebi** and **Abbas Deldar**, sentenced to 15 years in prison; **Javid Tehrani**, sentenced to seven years in prison, freed four years later, and re-arrested in June 2004; **Peyman Piran**, sentenced to ten years in prison; **Bina Darab-Zand**, sentenced in October 2004 to three years and a half in prison. In addition, the students organisation *Tahkim Vahdat* announced on December 23, 2005 that several of its leaders were sentenced *in camera* to imprisonment in December 2005: **Ali Afshari** (6 years), **Akbar Atri** (5 years), **Abdollah Momeni** (5 years), **Ahmad Faraji** (3 years), **Amir Balali** (1 year) and **Farid Modaresi** (8 months). Those persons have subsequently been released.

Ahmad Batebi, arrested in 1999 and sentenced to death, reduced to life imprisonment, freed last year for health reasons, was arrested again at the beginning of August and is currently in detention. According to Mr Batebi's wife, his life is in danger in detention since he is seriously ill.

On 28 April 2006, **Mr Ramin Jahanbegloo**, an academic of joint Iranian and Canadian nationality, was arrested at the airport in Tehran as he was awaiting a flight to Europe. According to statements by the authorities his arrest was linked to his contacts abroad. He was detained for four months, without formal charges, at the Evin Prison. On 30

August 2006, he was released on bail.

The rights of minorities

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

There are clear signs that the discrimination against the Baha'i community is on the rise. At least 59 Baha'is were arrested, detained or imprisoned in 2005. The Special Rapporteur on freedom of religion or belief has expressed her concern over the continued persecution of members of the Bahá'í community³.

Mr. Dhabihu'llah Mahrami, who spent 10 years in jail accused of spying for Israel, died in prison of unknown causes on December 15, 2005. Although Mr. Mahrami was formally accused of spying for Israel, court records indicate that he was tried and sentenced on the charge of being an apostate.

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

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

Following the killing of a Kurdish opposition activist by Iranian security forces in the city of Mahabad on 9 July 2005, demonstrations erupted in the neighbouring towns with large Kurdish populations. It has been reported that 5 persons were killed by the security forces; other sources estimate that the number of civilians dead varies between 12 and 20 persons. The Iranian authorities did not carry out an independent enquiry in those events, in spite of the fact that the security forces clearly used excessive force against unarmed civilians. Many demonstrators were arrested, including Kurdish human rights activists and journalists. Amongst those arrested were: **Mr. Mahmoud Salemi**, arrested on 4 August 2005 for participating in demonstrations in Saqez; **Mr. Borhan Divangar**, a member of the Saqez Bakery Workers' Union; **Ms. Roya Toloui**, a women's rights activist (released on bail on 5

³ *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Summary of cases transmitted to Governments and replies received*, CHR, 62nd Session, 27 March 2006, E/CN.4/2006/5/Add.1, at §§ 209 -210

October 2005); **Mr. Azad Zamani**, a member of the Association for the Defence of Children's Rights; **Mr. Madeh Ahmadi**; **Mr. Ejalal Ghavami**; and **Mr. Saïd Saedi**. Other Kurdish journalists arrested in July and August 2005 are reportedly still in prison, including **Mr. Mohammad-Sadigh Kaboudvand**, Director of the weekly newspaper *Payamkurdistan*, who was sentenced to 18 months in prison in August 2005 for upsetting public opinion and spreading separatist ideas. On 26 November 2005, 3 Kurdish activists had their convictions and sentences confirmed by the Supreme Court: **Reza Amini** (20 years in prison), **Hemat Azarpour** and **Abdollah Mohammadi** (15 years).

Saman Rasoulpour, human rights activist, was arrested in Mahabad in March 2006 and sentenced to two years imprisonment.

In the region of Khuzestân, tens of persons belonging to the Arab minority were arrested at the end of 2005, after protests for increased autonomy (the right to publish in Arabic, etc). Violent clashes erupted between the police and protesters, resulting in a number of injured. Many of those arrested were tried and convicted in closed hearings which violated the right to a fair trial.

The death penalty

The Islamic Republic of Iran continues to apply the death penalty under conditions which flagrantly violate international standards. No official statistics are available and independent sources of information are very fragmented. It is clear however that the numbers of death sentences and executions have been rising over the past months.

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

24 individuals were sentenced to the death penalty in June and July 2006, following closed hearings before Revolutionary Courts, which clearly violated the provisions of the ICCPR on the right to a fair trial. The defendants had been charged in connection to the violent clashes in Khuzestân. According to information received by LDDHI, the defendants did not have access to legal representation and not even their identities were made public. In August 2006, the Minister of Justice declared that six individuals would be executed in the coming days. Only their first names were revealed by the authorities: **Mohammad-Ali**, **Yaha**, **Nazem**, **Abdolemam**, **Andozahra**, **Hamzeh**.

Children under 18 years old at the time of the offence are

executed, in violation of the Convention on the Rights of the Child. In 2005, several executions of child offenders were recorded. **Mahmoud Asgari** (16 years) and **Ayaz Marhoni** (18 years) were hung in Mashhad in July 2005. They were sentenced to death for following convictions for the rape of a 13 years old child. **Rostam Tajik**, of Afghan nationality, who was minor at the time of the offence, was executed in December 2005.

Lack of cooperation with the Special Procedures

The Special Representative of the Secretary-General on human rights defenders, between the establishment of her mandate and 1 December 2005, sent 24 communications to the Government of Iran concerning 27 defenders and in one case three family members of a defender⁴. The Special Representative has noted that, "in many of its responses, the Government denied or failed to comment upon the alleged violations". The Special Representative further expressed her concern that the fact that several defenders were the subjects of repeated urgent appeals "suggests a lack of prompt measures on the part of the Government to put an end to on-going violations against defenders"⁵.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has raised concerns at "the inadequacy of the information" received in response to communications⁶.

The Special Rapporteur on freedom of religion or belief, has highlighted that the Iranian government has failed to respond to many urgent appeals, and that those responses which have been received are mostly incomplete⁷.

⁴ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani - Compilation of developments in the area of human rights *defenders*, CHR, 62nd Session, 6 March 2006, E/CN.4/2006/95/Add.5, § 786

⁵ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani - Compilation of developments in the area of human rights *defenders*, CHR, 62nd Session, 6 March 2006, E/CN.4/2006/95/Add.5, § 787 and Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani - Summary of cases transmitted to Governments and replies received, 62nd Session, 22 March 2006, E/CN.4/2006/95/Add.1, § 267

⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo - Summary of cases transmitted to Governments and replies received, 62nd session, 27 March 2006, E/CN.4/2006/55/Add.1, § 454

⁷ See also Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Summary of cases transmitted to Governments and replies received, CHR, 62nd Session, 27 March 2006, E/CN.4/2006/5/Add.1, at §208

Conclusions and recommendations

FIDH and LDDHI urge the Human Rights Council to adopt a resolution on the Human Rights situation in Iran and to appoint a Special Rapporteur on Iran. FIDH and LDDHI call on the Iranian authorities:

- To immediately and unconditionally free all those arbitrarily detained;
 - To guarantee the physical and psychological safety of all those detained;
 - To conduct effective investigations into allegations of violations of human rights;
 - To implement the recommendations of the UN human rights mechanisms and treaty bodies;
 - To put an end to discrimination against minorities;
 - To abolish corporal punishment;
 - To ensure that the death penalty is only carried out for the most serious crimes, never applied to juvenile offenders, nor carried out in public and adopt an immediate moratorium as a first step towards abolition;
 - To ratify CAT, CEDAW and the Statute of the ICC, without incompatible reservations;
 - To submit periodic reports in accordance with obligations under the ICCPR and the ICESCR.
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3. OCCUPIED PALESTINIAN TERRITORIES

FIDH remains deeply preoccupied by the grave human rights and humanitarian law violations in the Occupied Palestinian Territories, in spite of the Special session of the UN Human Rights Council.

Serious economic and social rights violations in the OPT

A mission of the FIDH was in Israel and in the OPT between 25 June and 2 July 2006. The mission was set up in order to examine the situation of economic and social rights in Gaza and the West Bank, almost one year after Israel 'disengaged' from the Gaza strip and three months after Israel and the international community decided to suspend all contacts with the government of the Palestinian Authority and to interrupt all aid channelled to and via that government, following the taking into office of a government led by Hamas on 29 March 2006 after fair and democratic elections were held on 25 January 2006. At the same time, the Israeli government decided to cease the restitution of VAT taxes and customs duties it collects on behalf of the Palestinian Authority.

The preliminary note of this mission shows that poverty and unemployment are raising in dramatic proportions in the Gaza strip and in the West Bank. According to the World Bank's previsions in March 2003, it was estimated that by the end of 2006, the average personal income would decrease by 30 percent in real terms, that unemployment would increase to 40 percent (from 23 percent in December 2005) ; and that poverty levels would climb from 44 percent to 67 percent. In May 2006, the World Bank commented : « Based on evolving Government of Israel and donor policies, these projections now appear too rosy ».

The financing plan proposed by the European Union and adopted by the Quartet is a step forward in the humanitarian support to the Palestinian population. Unfortunately, it does not guarantee the payment of salaries to the Palestinian civil servants, notably in the education and health care departments. The interim funding mechanism proposed by the World Bank on May 7, 2006 would have enabled the payment of these salaries. Deplorably, the Quartet did not choose to provide so. Consequently, the salaries of the civil servants of the PA have not been paid since March 2006. The Palestinian Authority has 152,000 civil servants, an average of 6 persons depend on each one of those civil servants. Thus, over 900,000 persons, almost one quarter of the total population of the OPTs, are affected by the nonpayment of salaries to the civil servants in the OPTs, and are currently essentially without any financial resources.

In this context of serious humanitarian crisis, FIDH welcomes the commitment of the EU, expressed among others through the EU Council conclusions on 18 July 2006, to « press ahead with the further expansion of the proposed Temporary International Mechanism to which the EU and its Member States have contributed significantly. » Nevertheless, this mechanism should be

revised to allow the paiement of the salaries of the Palestinian civil servants.

The « Operation Summer Rains » and its dramatic consequences on the Palestinian civilian population.

The FIDH condemns the rocket firing from Palestinian armed groups against Israeli civilian population. However, the reaction by the Government of Israel results in a flagrant and serious violation of international humanitarian law. The operations of the Israeli Defence Forces constitute at the least war crimes, if not crimes against humanity, according to international criminal law. As acknowledged by the Special Rapporteur on the human rights situation in the OPT, these interventions are disproportionate.

According to information obtained by our member organizations: the Palestinian Centre for Human Rights in Gaza, and B'Tselem, and following our mission in the OPT, the attacks perpetrated by the Israeli Army led to the deliberate destruction of Gaza strip's power station, of water supplying systems, of bridges, roads, offices of the Palestinian Authority and of other civilian infrastructures.

Furthermore, an important number of Palestinian civilians have been killed by bombings in the past weeks and months. Since the incursion began in the Gaza Strip, 246 people, mostly civilians and including 48 children and 30 women have been killed and 887 injured. Between 24 and 30 August, 30 Palestinians, including 3 children, a mentally disabled young man and a woman, were killed by IDF. 20 of the victims were killed by IDF in al-Shojaeya neighborhood in Gaza City.

Arbitrary arrests conducted by Israel of 9 members of the Palestinian government, of 31 members of the Palestinian Legislative Council elected according to an electoral process which the international community has confirmed to be fair and transparent, and of political leaders, are a direct threat to the very existence of Palestinian institutions.

The power station destroyed by the Israeli armed forces on June 28th insured the supplying in electricity of an area reaching to 43% of the total population of the Gaza strip. 700,000 individuals are affected by the power breakdowns. The water supplying system is also seriously disturbed, some pumps being now out of service. Moreover, after the closing of Karni and Rafah cross-points, and the almost complete closing of the Erez cross-point, food supplies, gas and combustible are lacking, and people can no longer seek healthcare in Egypt. The situation is particularly worrisome in hospitals and healthcare centers, where water supplies have become insufficient and where lack of combustible is preventing them from feeding their generators.

Because they directly targeted the civilian Palestinian population, the measures and attacks carried on and at the origin of this humanitarian crisis, constitute a collective punishment in violation of Article 33 of the Fourth Geneva Convention. They also place Israel in violation of the

United Nations Covenant on Economic, Social and Cultural Rights, which applies to the Occupied Palestinian Territory as the International Court of Justice has reaffirmed in its Advisory Opinion on July 9th, 2004.

On 1st September 2006, and after a visit in the OPTs, Under-secretary-general for humanitarian affairs Jan Egeland described Israel's month-long military offensive in Gaza as a "disproportionate use of force". Mr. Egeland, reflecting on more than two decades of travel to the region, said he had never felt such a sense of disillusionment, despair and hatred as on his last mission.

FIDH therefore calls upon to the Human Rights Council to adopt a resolution which, inter alia:

- strongly condemns the violations of international humanitarian law and human rights perpetrated by all the parties in Israel and in Palestine, in particular those committed in the framework of the « Operation Summer Rains ».
- draws the conclusions of the International Inquiry Mission sent by the Council in Palestine and completes its conclusions with information concerning the rocket attacks on Israel.
- requests the United Nations Security Council to deploy an interposition force in the OPTs granted with the mandate to halt the worsening of the humanitarian crisis by ensuring the supplying of food, water, medicine, fuel and electricity to the Palestinian population, and to ensure protection of the Palestinian civilian population;
- demands that the Quartet reviews the mechanism of humanitarian aid aimed at the Palestinian population, following the World Bank propositions, in order to enable the payment of salaries to the Palestinian public servants, notably in the education and health care departments, and requests the Israeli government to stop withholding the taxes which are the property of the Palestinian Authority;
- requests the Palestinian armed groups to stop firing rockets at the Israeli civilian population;
- requests the government of Israel, the occupying power, to respect international humanitarian law and human rights and consequently to stop immediately any current military operation in the OPT
- requests the government of Israel to free unconditionally the Palestinian ministers, the members of the Palestinian Legislative Council currently detained, and the Palestinian Armed Groups to release the Israeli soldier captured in the Gaza Strip.

4. PEOPLE'S REPUBLIC OF CHINA

FIDH and Human Rights in China (HRIC) express their concern regarding alarming human rights trends in China in 2006, including repression of lawyers and the rule of law, and freedom of expression including censorship of the media, combined with growing social unrest and repression. FIDH and HRIC are further concerned about the Chinese Government's implementation of recommendations by the UN Special Procedures and treaty bodies, including the country report of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, and Concluding Comments of the Committee on the Elimination of Discrimination against Women (CEDAW) following its examination of the 5th and 6th periodic reports of the Chinese government at its 36th Session in August 2006.

Compliance with international human rights obligations remains a concern

Recommendations of several UN Special Procedures and treaty bodies remain unimplemented, as reflected in the follow-up reports. In 2004, the Working Group on Arbitrary Detention noted its concern that previous recommendations had not been adopted. In 2006, the concluding remarks of CEDAW's consideration of China's report regretted that no mention was made of implementation of earlier recommendations. In particular, CEDAW noted that, despite previous recommendations, there is still no definition of "discrimination" in legislation, hindering effective implementation of the Convention as a whole

Recent conclusions and recommendations of the Special Rapporteur on Torture and the Committee on the Elimination of Discrimination against Women suggests serious human rights concerns remain. Recommendations made by international human rights experts must be supported and followed-up.

Crackdowns on human rights defenders increasing, reflecting hardening official attitude.

In August 2006, several sentences were announced, sending a chilling message to journalists, lawyers, and all human rights defenders in China. These included:

Zhao Yan, a journalist, was tried behind closed doors on Jun 16, 2006. On August 25, 2006, Zhao Yan was sentenced for three years for fraud. The verdict noted there was insufficient evidence for the state secrets charges. Zhao Yan's lawyer has announced they are appealing the "absurd" conviction.

Ching Cheong, a journalist was convicted of espionage on August 31, 2006, on charges related specifically to spying for a Taiwanese foundation. Ching was sentenced to five

years imprisonment and subsequent deprivation of political rights for one year. Personal property valued at 300,000 *yuan* was also confiscated.

Chen Guangcheng, a blind activist lawyer, was tried and convicted on August 18, 2006, on charges of “deliberately damaging property and gathering a mob to disrupt traffic.” He was sentenced to 4 years and 3 months in prison.

*In the face of deepening social unrest, government crackdowns on civil society intensify and control over media coverage tightens.*⁸

In early 2006, the Chinese government began to acknowledge the seriousness of growing social unrest, but characterized it as a threat. In State Council speech on December 29, 2005, Premier Wen Jiabao for the first time acknowledged mass incidents as a significant social order problem, and as a threat to “building a harmonious society”—a key aspiration of President Hu Jintao’s leadership.

Key causes fueling the growing social unrest and protests:

- Growing inequality and the widening gap between rich and poor
- Public anger, frustration, and efforts to address problems of illegal land grabs and inadequate compensation, local corruption, the closure of state-owned factories, and industrial pollution of farmland
- More radical and more organized mass demands for social justice
- Alternative means of redress prove futile or unavailable

Instead of addressing root causes of social unrest and protests, a tougher official line is adopted

- Stability before all else: *People’s Daily* (July 28, 2005) front-page editorial headlined, “Maintaining Stability to Speed Development”
- Establishment of special heavily-armed “anti-terror” and riot police units in 36 major cities, including Beijing, Shanghai, Chongqing and Tianjin.⁹ (August 18, 2005)
- Influential Party magazine *Qiushi* publishes article by two senior generals, (January 1, 2006) reaffirming that People’s Armed Police (PAP) should “truly become an extremely combat-effective force to deal with sudden incidents.”

⁸ See HRIC Trends Bulletin, China responds to increasing social unrest with greater repression, January 2006.

⁹ “China Rises to Combat Growing Unrest,” *Taipei Times*, August 19, 2005, <http://www.taipetimes.com/News/world/archives/2005/08/19/2003268324>

- The State Council issued a national plan on emergency response, which addresses the prevention and handling of various domestic incidents (January 8, 2006): “Social safety incidents,” referring specifically to terrorist attacks, are among the four major types of emergency incidents. The plan also highlights the central role of PLA and PAP in dealing with all emergency incidents.¹⁰
- Stricter controls imposed on media reports relating to petitions and other incidents of unrest.

*Media censorship and crackdowns continues and intensifies*¹¹

Censorship Techniques: Disciplinary actions of varying severity are imposed on those who do not comply with State content requirements. Although press freedom is enshrined in article 34 of the Constitution, the message from the government is clear: the media must stay within approved reporting boundaries, curb public criticism of the government, or face harsh reprisals.

State influence is exercised through shutting down or suspending publications, censorship of content, and appointment of media personnel. At each level of government, the Propaganda Department plays a key role in monitoring editors and journalists through a national registration system and mandatory participation in ideological training sessions. Self-censorship is also reinforced under this top-down censorship system with reporters and editors often seeking prior approval from the Propaganda Departments on news stories deemed to be sensitive.

The following measures target publications and individuals, including:

For Publications:

- Content removal: Sensitive news stories or negative reporting that may embarrass government officials is generally removed.
- Publication closures and restructuring: Publications have been closed or suspended for publishing unapproved material.

For Individuals:

- Job dismissals, financial disincentives, and banning writers.
- Party disciplinary punishment: Journalists and editors are subject to disciplinary investigation, and in some cases are expelled from the Party.
- Arrest and imprisonment: Although press freedom is enshrined in article 34 of the

¹⁰ “National Plan on Emergency Response to Public Incidents,” *People’s Daily*, January 8, 2006, <http://politics.people.com.cn/GB/8198/4007561.html>.

¹¹ See HRIC Trends Bulletin, Media censorship intensifies with new round of crackdowns, February 14, 2006.

Constitution, journalists are vulnerable to arbitrary interpretation and enforcement of the State Secret laws and other regulations related to national security. When such laws are invoked, journalists are often denied open trials and access to legal counsel.

Individual cases include:

- **Li Datong**, chief editor of *Beijing Dian (Freezing Point)* was forced to resign after publishing articles “incompatible with the mainstream ideology.”
- **Yang Bin**, chief editor of the *Beijing News*, together with his deputies **Sun Xuedong** and **Li Duoyu**, were fired on December 28, 2005, after reporting on instances of land grabs and local corruption.
- **Xia Yitao**, deputy editor-in-chief of *Southern Metropolis Daily*, was dismissed on December 30, 2005, over a report about a vice governor receiving a demerit after a deadly coal mine accident in Meizhou.
- **Zhao Yan**, journalist who researched peasants’ rights and researcher for the *New York Times*, was tried for leaking state secrets and fraud. He was sentenced to three years for fraud on August 25, 2006.
- **Ching Cheong**, chief China correspondent for Singapore’s *Straits Times*, was arrested on April 22, 2005 on suspicion of espionage. On August 31, 2006, Ching was sentenced to five years’ imprisonment.
- **Zhu Wangxiang** and **Wu Zheng** were convicted on January 17, 2006, for publishing sensitive material in the *New China Youth* magazine without the approval of media authorities.
- Several writers and reformist political commentators have been banned, including **Jiao Guobiao**, **Li Rui**, (CPC member), **Wang Yi** (writer and essayist), **Yu Jie** (writer and essayist), **Mao Yushi** (director of the Tianze Economic Research Institute) and **Yao Lifa** (peasants’ rights activist in Hubei Province).

The past two and a half years, however, have seen an increase in restrictive policies and media suppression that are central in controlling freedom of expression.

New law adopted to extend control through registration requirements and expansion of definition of “news”: On September 25, 2005, the State Council Information Office and the Ministry of Information Industry issued the Rules on the Management of Internet News and Information Services [互联网新信息服务管理定]. Web site operators are required to re-register their news sites and police their sites for content that can “endanger state

security” and “social order.” Essentially, the regulation centralizes all China-based Web news and opinion under a state regulator. Chinese bloggers, bulletin boards on popular portal sites and other independent Chinese-news Web sites are affected. Additionally, the legal definition of Internet “news” has been expanded from “news published and republished” to include “reports and comments on political, economic, military, foreign policy and other social public affairs.”

Regulation on press registration (February 16, 2005): The General Administration of Press and Publication announced a new registration system for journalists. New press cards were issued, and journalists throughout the country are required to renew their press cards every five years.

*Reports from China detailing tightening regulations, procedural obstacles, increasing surveillance, harassment and intimidation targeting lawyers, demonstrate an increasingly severe crackdown on the legal profession.*¹²

This signals a major setback for the Rule of Law, and the development of an independent, transparent, and accountable legal system in China.

Institutionalized setbacks, including the misuse of Chinese criminal law and criminal procedure law provisions and restrictive regulations that undermine lawyers’ defense work, especially in sensitive political or social unrest cases; and

Procedural obstacles that hinder a zealous defense of criminal defendants

This alarming trend raises serious concerns about the Chinese government’s commitment to its stated goal of establishing a rule of law. Through official efforts to use legal and extra-legal means to silence and control public dissent and unrest, this crackdown further calls into question the openness and fairness of the Chinese judicial system and the future of an independent bar in China.

Individual cases include:

- **Zheng Enchong**, a lawyer who advised Shanghai residents in over 500 cases of forced eviction, sentenced in 2003 to 3 years’ imprisonment for “leaking state secrets.” Zheng was released on June, 5 2006, rearrested and released on July 12, 2006, and now lives under virtual house arrest and continue to be subjected to intimidation and harassment.
- **Yang Maodong**, (also known as **Guo Feixiong**), a lawyer who has been subjected to a series of assaults after providing legal assistance to residents of Taishi village. He has been detained

¹² See HRIC Trends Bulletin, *Setback for the Rule of Law: Lawyers Under Attack in China*, August 28, 2006.

and beaten by police several times for his advocacy efforts and for starting a peaceful protest outside the Xinhua Gate to the central government residential compound in Beijing.

- **Li Baiguang**, a Beijing lawyer who was arrested and detained on December 14, 2004 after bringing legal action against the government on behalf of over 100,000 peasants seeking damages from forced land evictions, and who has been detained and assaulted many times since his release. In January 2006, he was attacked by police and security officers who raided a prayer meeting he was attending.
- **Chen Guangcheng**, a blind lawyer who assisted villagers in Liyin, Shandong Province to file a class action lawsuit against local officials for forced abortion and sterilization, was confined to his home and beaten in August 2005. On August 24, 2006, Chen was sentenced to 4 years and 3 months in prison.
- Lawyers who defend other lawyers subject to prosecutions are also frequently targeted. For example, lawyers for **Chen Guangcheng** were physically assaulted and detained.
- **Gao Zhisheng**, a lawyer known for his work defending underground Christians, dissidents and other lawyers detained for human rights work, was beaten by police in July 2006 after complaining about living under constant police surveillance. Gao had his license to practice revoked in 2005 and on August 18, 2006, police announced that Gao has been detained "for suspected involvement in criminal activities."

The combination of these restrictions and controls over lawyers has had a chilling effect on the criminal bar, hindering the numbers and ability of lawyers handling sensitive cases, and undermining the overall independence, legitimacy, and accountability of the legal system

This trend has implications for the general development of rule of law in China, access to justice, and the role of law in effectively and fairly adjudicating social problems.

EUROPE

1. RUSSIAN FEDERATION

FIDH expresses its deepest concern at the serious rollback of the rule of law and human rights in Russian Federation.

Chechnya

Extra-judicial killings, enforced disappearances, torture and looting are still ongoing in Chechnya. Impunity is still high in Chechnya, few crimes are followed by a proper investigation. FIDH observed last year that torture is still a key element of the anti-terrorist activity of security services in Chechnya and the decisions of courts on the cases related to terrorist activity or participation in illegal armed formations in a great number of cases are based on evidence extorted under torture and self-accusations. Places of illegal detention are still widespread all-over the Chechen Republic.

Freelance journalist **Elina Ersenoeva** was abducted on 17 August 2006 in the Chechen capital Grozny. Her family fears that she kidnapped in connection with information that she had been married to Shamil Basaev and detained by law enforcement officials. She had beforehand been harassed and threatened over several months by men who were suspected of being members of law enforcement agencies. **Said-Emin Khamayev** from the village of Chiri-Yurt had been arbitrarily detained by unknown members of security services on 28 June 2006 and allegedly beaten to death the next day while held at ORB-2, a detention facility in Chechnya. On 27 July 2006 at Kurchaloi village Chechen security forces killed a separatist fighter **Dushaev**, and exhibited his head after cutting it off, making a video footage of the bloody show of the cut head.

The wide range of systemic human rights violations and the impunity of security forces for their criminal acts contribute to the overall deterioration of the security situation in the entire Northern Caucasus region. On May 31 in the village of **Nesterovkaya** in Ingushetia, took place a special operation, carried out by personnel of security services of the Chechen Republic. As a result of the operation, Chechen security servicemen publicly executed the person they captured in front of Ingush militiamen and numerous residents of the village Nesterovskaya. Furthermore, according to the human rights center Memorial, the situation in the village was on the edge of armed clash between the representatives of security services of the Chechen Republic and Ingush militiamen.

Freedom of expression

Freedom of expression and above all of the media is increasingly violated. Pressure is exerted on the national TV channels preventing live broadcasting, free political debates with opposition parties, free information about the Russian political situation. The organized stifling of expression also concerns the written press.

Human rights defenders

Attacks on Human Rights Defenders are increasing alongside restrictions of their rights. Many organisations are subject to legal proceedings, to regular tax inspections, to threats and attacks and to the theft of data (*See the Annual report 2005 of the Observatory for the protection of human rights defenders*).

In April 2006 a law entitled “**Amendments to Some Federal Laws of the Russian Federation**”, came into force addressing all non-profit organisations including those working on the protection and defence of human rights. Even though several restrictive provisions were finally withdrawn from the draft, the law, as adopted in third reading on 23 December 2005, remains in blatant violation of the right of freedom of association, demonstrates a determination to control and silence independent organisations, and to limit the presence of international NGOs on Russian territory (See the note of the Observatory for the protection of human rights defenders *Russian Federation: Amendments to Federal Laws regulating the activity of civil society*, January 20, 2006).

On February 3, 2006, **Mr. Dmitrievsky**, executive manager of the Russian-Chechen Friendship Society and editor-in-chief of the newspaper *Pravozaschita*, a joint publication of RCFS and the Nizhny Novgorod Society for Human Rights, was condemned to a two-year suspended prison sentence and to a four-year probation period by the Sovetsky District Criminal Court of Nizhny Novgorod.

Starting on 25 November 2005 and for six and a half months, the Federal Tax Service Inspectorate carried out a tax audit of the entirety of **International Protection Centre** (IPC) and on its founder's activities, Russian human rights lawyer, **Karina Moskalenko**. On 17 July 2006, tax authorities delivered the results of this audit with a sudden demand for the Center to pay 24 % profit tax on all of IPC's projects between 2002 and 2004, around 4.580.000 Rubles (133.600 Euro) in total. FIDH fears that this decision might be linked to the IPC's activities such as representing applicants in human rights cases before Russian courts and presenting cases against the Russian Federation before the European Court of Human Rights and the UN Human Rights Committee. Moreover, some of the cases submitted to the ECHR concern violations in Chechnya or complaints by the relatives of hostages who died during the Moscow “Nord-Ost” performance siege in 2002. Karinna Moskalenko also acted as an international defense counsel to the Yukos oil company head Mikhail Khodorkhovsky.

In her annual report published in March 2006, **Hina Jilani**, Special Representative of the Secretary General on the situation of human rights defenders reiterated her « *concerns regarding the personal safety and security of human rights defenders in the Russian Federation* ». Furthermore, she said she was « *concerned regarding the restrictions on freedom of association and expression allegedly being imposed on human rights organizations and the labeling of those connected with these NGOs as terrorists* ».

Democratic rights

Respect of citizen's right of vote again faced some

alarming developments. In early June 2006, Russian Parliament eliminated an option «against all the candidates» which appeared on ballots on every type of elections and permitted the expression of discontent and protest. This new interference by authorities comes within the context of systematic violations of the right of citizens to express themselves through their votes. Indeed, in June 2004 citizens and political opposition parties lost the right of initiating a referendum. In October 2004, the election of the governors by the universal suffrage was abrogated and replaced by the direct designation by President of the Russian Federation.

Racism and radical nationalism

For several years observers have noted the development of radical nationalist and racist movements and attacks in Russia. Thus, only in the 6 first months of 2006, 18 people were murdered, victims of racial attacks in Russia, and 119 beaten and injured according to the statistics of the SOVA Centre, specialist in the field of racial discrimination, which admits that these figures are not exhaustive.

Furthermore, the bomb explosion thundered on August 21, 2006 on the **Tcherkizovskiy market** in Moscow and more than 10 people died at once, more than 50 were wounded. As the investigation showed, terrorists belonged to nationalistic groups and this crime was racially motivated since the market employees are often ethnically non-Russian.

Mass riots took place on 2 and 3 September 2006 in a small town of **Kondopoga** in the North of St. Petersburg. They were caused by an incident on the night of August 30 with an fight of drunken people in a restaurant but the same evening, a mass fight between Chechen and Russian inhabitants of the town started. Many people were beaten (some of them had not taken part in the first conflict), two Russian ethnic men were killed, two more died – presumably - in the hospital, some others were seriously injured.

FIDH welcomes the recent efforts to bring those responsible for hate crimes to justice and condemnations which followed. However, these efforts to combat the hate offences continue to lag behind the radical nationalist activity. Furthermore, the proceedings are extremely long, the sentences are often probational and, indeed, many racist offences are never detected.

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 mechanism of control over the law enforcement structures are lacking. The situation of the penitentiary system is also preoccupying.

Situation in the Russian army

FIDH also notes with a great concern the extremely serious situation in the Russian army. A practically established system has grown up of hazing young soldiers who have been called up for military service which leads to their murder, torture, inhuman and degrading treatment

and other human rights violations. Psychological torture is used, as are refined methods of extorting money, intimidation and humiliation but typically there is no action by the commanding officers and the crimes and offences in the unit are concealed. The Procuracy and military authorities cannot and will not provide an effective investigation into cases of torture in the RF Armed Forces, particularly with regard to the existing procedure of preliminary inquiry by the commanding officers of military units. On their return to civilian life, young men bring with them a violent and even criminal type of behaviour. The lack of rehabilitation for victims of violence and also for its perpetrators means that more serious crimes are committed.

Recommendations

FIDH requests the Council on Human Rights to recognize the gravity of the situation prevailing in the Russian Federation, notably in Chechnya, and ask the authorities to inter alia:

- condemn on-going grave violations of human rights in Chechnya, in particular extra-judicial killings, enforced disappearances and torture in and around the Republic and impunity of authors of these violations and urge Russian authorities to put an end to the practice of illegal prisons, disappearances and all acts of violence against civilians;
- remind Russian authorities that all legislative or institutional reform must comply with principles of democracy and the Rule of Law, particularly the representation of all trends making up society and urge them to comply with human rights instruments on freedom of the association;
- guarantee the physical and psychological integrity of human rights defenders and stop immediately all acts of violence and harassment towards them, stop all acts of defamation against human rights defenders, carry out a complete and impartial investigation on cases of attack and harassment;
- urge Russian authorities to fight racism through the adoption of appropriate statutes and creation of efficient mechanisms;
- 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;
- and more generally comply with the provisions of the Declaration on Human Rights Defenders, as adopted by the United Nations on December 9,

1998 and other international mechanisms.

2. UZBEKISTAN

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

Andijan

On 13 May 2005, in Andijan - a town of 300,000 inhabitants situated in the valley of the Ferghana - the army opened fire on thousands of demonstrators (between 10,000 and 30,000) who had gathered in the town centre to protest against the trial of 23 people accused of belonging to the radical Islamic group, Akramia, and to demand an improvement in living conditions. During the night of 12 to 13 May, weapons were taken from a military building by men who took the regional administration and the high security prison in Andijan by storm, releasing the 23 accused and more than a thousand inmates.

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

Andijan was cordoned off by a huge military and police presence. Hundreds of people have been arrested and shots were heard in Andijan during the night of 16 to 17 May 2005. Some eyewitnesses have mentioned the existence of communal ditches which have been dug in the public parks to hide any trace of the extrajudicial executions.

President Karimov denied giving the order to fire on the crowd and accused Islamic extremists of using women and children as human shields. On 13 and 14 May 2005 there has been a news blackout, with access to foreign media blocked throughout Uzbekistan, several journalists expelled from the town and some independent media closed.

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

In his annual report published on 27 March 2006, the Special Rapporteur on Extrajudicial, summary or arbitrary executions expressed his « concern at the major contradictions between the Government of Uzbekistan's account of the deaths that occurred in Andijan on 13 May 2005 and the many consistent allegations from other sources. » The Uzbek government did not give adequate and substantive answers to the numerous allegations sent by the Rapporteur and by the Special Rapporteur on Freedom of expression.

Moreover, on 10 August 2006, Louise Arbour expressed her grave concern at the deportation of four Uzbek refugees and an asylum seeker who had left the country

Andijan events by the Kyrgyz Republic to Uzbekistan. The extradition exposes them to a serious risk of being subjected to torture and is in violation of the non-refoulement principle contained in article 3 of the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. It has to be noted, that Uzbek secret services seek to get post-Andijan asylum seekers back from other countries as well. Refugees are deported or risk extradition in violation of international standards to which their host countries are party.

Repression against human rights defenders and civil society organisations

Government authorities severely muzzled the civil society in order to destroy all voices trying to speak out in the Andijan tragedy and its consequences. Today, the repression of human rights defenders is systematic. It takes various forms, including criminal prosecutions based on politically-motivated charges.

Some non-gouvernemental organisations were closed, like the Bukhara Centre for Humanitarian Law or Internews. Others are a target of permanent harrassments and attacks, as members of the Human Rights Society of Uzbekistan (HRSU).

Mr. **Bakhtior Khamroev**, head of the Djizak section of the Human Rights Society in Uzbekistan (HRSU), was attacked at his home, in Djizak, on August 18, 2006 as he was having a meeting with two representatives of the British Embassy in Uzbekistan, who had come to visit him to inquire into the human rights situation in Djizak and into the situation of his son, Mr. **Ikhtior Khamroev**, who has been detained since August 2, 2006.

He was attacked by four women and one man who hurt him with a metallic object, which caused him a concussion to the head. In the meantime, four representatives from Djizak town hall arrived and told Mr. Khamroev that he had to stop his human rights activities. Mr. Khamroev had not called them to inform them of the situation. He was then brought to the hospital where he received emergency care, but the doctors refused to follow his case and to open a medical file, which would have implied the report of the situation to the police.

On May 24, 2006, Mr. **Arabboi Kadirov**, Head of the human rights NGO *Ezgulik* in the Pop district, in the region of Namagan, was arrested at his home, for "suspicion of document falsification". The police, which had an arrest and search warrant, seized his computer and several documents related to his human rights activities. Mr. Kadirov would reportedly be detained in custody in a police station of the Pop Region.

In October 2005, police arrested **Mukhtabar Tojibaeva**, an outspoken critic of the government and chairwoman of the Burning Hearts human rights club in Margilan, on the eve of her departure for an international conference for human rights defenders at risk. On March 6, 2006, Mrs. Tojibaeva was sentenced to an eight-year prison term by the court of Dustobod, Urta Chirchik rayon court, in

Tashkent oblast, for 17 different charges - mostly economic -, including "slander" (article 139.3 of the Criminal Code) and "membership of an illegal organisation" (article 244). Since the beginning of her detention in October 2005, Mrs. Tojibaeva has not been allowed to meet her lawyers in private, and several defence witnesses were ordered to leave the Court before giving their statements.

Mrs. Tojibaeva was detained since July 2006 in a psychiatric service for mentally ill and drug-addicted persons in a women's detention centre in Tashkent in extremely harsh conditions. It, conducted her to write a goodbye letter to her relatives, in which she stated that she would not survive much longer in such conditions. Moreover, Mrs. Tojibaeva is not allowed to receive the visit of her relatives and lawyers.

Furthermore, these events take place in a context of an increasing control of the authorities over NGOs activities, in particular since the signature of restrictive amendments on freedom of association in January 2006. This text provides, amongst other things, that the organisation of any meeting or assembly requires the previous authorisation of the competent national authorities, and that the support or funding of "political activities" by an organisation will be sanctioned by a fine.

Besides, these amendments also aim at dissuading foreign NGOs from participating in the political situation of the country (article 239 of the Criminal Code), for example by means of any activity led by political parties or "mass movements". The involvement of a foreign NGO in such activities will be sanctioned by a valuable fine.

Furthermore, these new provisions allow for an important growing heaviness of many other fines, sanctioning for example "libel" (multiplication by four of the maximum amount of the fine), "insult" (article 159) or the "dissemination of documents of which the content may be a threat to the public security and order" (article 244.1), etc.

Administration of Justice and death penalty

The judiciary remains wholly dependent on political authorities and largely corrupted, as documented by an FIDH fact finding mission sent in the country in May 2005.

Moreover, although on the 1st of August 2005, a presidential decree announcing that the death penalty will be abolished on January 1st, 2008, was adopted, the death penalty is still practiced in this country. Several hundreds of persons have been sentenced to death and executed since the country became independent in 1991, accused of terrorism or murder with aggravating circumstances, without the chance to argue their rights.

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

number of execution a year in Uzbekistan fall somewhere between 52 and 780.

Persons arrested see their rights blatantly violated: the time limits for the detention in custody are violated; they are not informed about their rights, corruption prevails; legality of detention is not a subject to judicial control; defendant's relatives are not informed; lawyers are victims of all kinds of pressure in order to dissuade them from defending their clients.

A number of testimonies given first-hand to the FIDH representatives in May 2005 confirm that many people are condemned to death based on confessions obtained under torture and that corruption is an integral part of investigation, trial and appeal process in such cases.

In his annual report for the 62nd Commission on Human Rights, The Special Rapporteur on extrajudicial, summary or extrajudicial executions underlined that he did not receive any answer from the Uzbek authorities to his urgent appeal concerning the reported imminent execution of Farid Nasibullin whose confessions which led to his death sentence were obtained under torture.

Conditions of detention awaiting execution amount to cruel, inhuman or degrading treatment: in addition to the small size of the cells, the lack of proper food and exercise, the lack of proper bedding and the very strict censure of correspondence, the secrecy surrounding executions increase the suffering of both prisoners and their families. Neither the prisoner nor their family are informed of the date of execution. The continuing secrecy around the date, place of execution and burial is needlessly cruel to relatives. The bodies of the condemned are never returned to their families. The UN Special rapporteur on Torture as well as the UN Human Rights Committee consider that this practice constitutes cruel, inhuman or degrading treatment, prohibited under international human rights instruments ratified by Uzbekistan.

The FIDH welcomed the presidential decree announcing the abolition of the death penalty in 2008 but regrets that it is not provided for with immediate effect or, as a minimum, that a moratorium is not adopted on executions until full abolition will be in force.

Recommendations

FIDH requests the Human Rights Council to recognize the gravity of the situation prevailing in Uzbekistan and adopt a resolution by which it will transfer the 1503 procedure into a public procedure, transfer the mandate of the independent expert into one of a Special Rapporteur on Uzbekistan, with the task of presenting a report to the UN Human Rights Council.

The resolution should also urge the Uzbek authorities to, *inter alia*:

- cooperate fully with the Special Rapporteur, as well as with the different UN Human Rights Special Mechanisms,
- make possible an international mission of

investigation into the events in Andijan and to establish accountability for the acts of violence

- take immediate and concrete steps to tackle endemic corruption, investigate corrupt officials and prosecute to the full extent of the law
- guarantee the independence of the judiciary in conformity with the ICCPR and the UN Basic Principles on the Independence of Judiciary
- to guarantee the physical and psychological integrity of all citizens and the observance of human rights in accordance with its international and regional undertakings
- cease harassment and intimidation of people whose views differ from the authorities,
- treat the Uzbek refugees extradited to Uzbekistan from the other countries in accordance with international obligations and to release them from detention or promptly charge and try them in accordance with international fair trial principles,
- to put an end to all acts of harassment and reprisals against human rights defenders in Uzbekistan in conformity with the Declaration on Human Rights Defenders, adopted by the United Nations' General Assembly on December 9, 1998
- render its laws on the freedom of association consistent with international human rights law
- adopt an immediate moratorium on the executions till the death penalty will be completely abolished
- more generally, conform with the provisions of the Universal Declaration on Human Rights, and with all other international human rights instruments to which Uzbekistan is a party.
- The resolution should also urge the Russian, Ukrainian, Kyrgyz and Kazakh authorities to, *inter alia* refrain from further deportation of refugees and asylum seekers to countries where there are substantial grounds to believe that they would face an imminent risk of grave human rights violations, including torture, and where their life is in danger, as in Uzbekistan where the death penalty is still practiced and the right to a fair trial is not guaranteed.

THEMATIC PRIORITIES

1. HUMAN RIGHTS DEFENDERS

En 2006, les défenseurs des droits de l'Homme ont, dans un grand nombre d'Etats, continué de payer au prix fort leur détermination et leur engagement en faveur des droits de l'Homme et des libertés fondamentales.

Depuis le début de l'année 2006, la FIDH a ainsi recensé 17 cas d'assassinats ou de tentatives d'assassinats et près de 110 cas de détentions arbitraires, dans le cadre de son programme conjoint avec l'Organisation mondiale contre la torture (OMCT), l'Observatoire pour la protection des défenseurs des droits de l'Homme.

Qu'ils soient avocats, dirigeants syndicaux, dirigeants de communautés indigènes, défenseurs de l'environnement, ou simplement engagés dans la lutte contre l'impunité ou en faveur de la paix dans leur pays, ces hommes et ces femmes sont le plus souvent considérés comme des « ennemis de l'Etat », à faire taire. Quels que soient les auteurs des violations à leur encontre (étatiques, privés ou paramilitaires), ceux-ci bénéficient le plus souvent de la plus grande impunité.

La répression visant les défenseurs et/ou leur famille est multiforme : ils sont l'objet d'assassinats ou de tentatives d'assassinats (**Colombie, Guatemala, Mexique, Irak, Philippines**), de menaces de mort (**Colombie, Guatemala, Ouzbékistan, RDC**), de torture et de mauvais traitements (**Colombie, Ouzbékistan, Tunisie, Zimbabwe**), d'arrestations et de détentions arbitraires (**Bélarus, Djibouti, Ethiopie, Iran, Chine, Cuba, Ouzbékistan, Israël, Syrie, Turkménistan**), de poursuites judiciaires (**Algérie, Russie, Ouzbékistan, Soudan**), ou encore de campagnes de diffamation (**Fédération de Russie, Tunisie, Pérou**).

Cette répression passe aussi par la multiplication de lois restrictives visant, de la part des Etats, à neutraliser la société civile et à sanctionner les membres d'organisations non gouvernementales (ONG) pour leur seul engagement en faveur des droits de l'Homme et de la démocratie (**Fédération de Russie, Soudan**). Au **Bélarus** par exemple, quatre défenseurs qui avaient annoncé la création, en février 2006, d'une organisation visant à veiller au bon déroulement des élections présidentielles du 19 mars 2006, ont été condamnés à des peines de prison en vertu des dispositions du nouveau Code pénal amendé en décembre 2005, qui avait été vivement critiqué par l'ensemble de la communauté internationale pour ses dispositions très restrictives en la matière.

La FIDH est tout particulièrement préoccupée par le sort des défenseurs des droits économiques, sociaux et culturels.

Les dirigeants paysans et indigènes sont ainsi victimes d'une rare violence comme aux **Philippines**, ou plusieurs d'entre eux ont été assassinés en 2006. La situation reste

en outre particulièrement préoccupante pour les défenseurs des sans terre au **Brésil** ou les dirigeants des communautés autochtones. Ainsi, au **Chili**, les représentants de la communauté Mapuche sont victimes d'une véritable politique de criminalisation de la mobilisation sociale, et sont ainsi régulièrement condamnés à de longues peines de prison, généralement prononcées sur la base de la Loi antiterroriste ou de la Loi de Sécurité de l'Etat. Au **Mexique**, le 11 mars 2006, M. Francisco Concepción Gabino Quiñónez, dirigeant indigène opposé aux activités de l'entreprise minière appartenant à la multinationale italienne Ternium du Groupe Techint, à Peña Colorada dans l'Etat de Jalisco, a été retrouvé mort, portant des traces de torture.

Les dirigeants syndicaux continuent également de se heurter à une forte répression en Colombie, au Zimbabwe, en Corée du Sud, ou encore à **Djibouti**. Dans ce dernier pays, on a assisté en 2005-2006 à une recrudescence d'actes visant à criminaliser les défenseurs des droits de l'Homme (arrestations, licenciements, actes de harcèlement policier et judiciaire, menaces, etc.), tandis que le nouveau Code du travail, entré en vigueur en janvier 2006, permet aux autorités de contrôler ou de refuser la création d'un syndicat, ou de dissoudre un syndicat sur simple décision administrative, à la demande de certains ministères.

Enfin, ceux qui défendent les minorités sexuelles restent l'objet d'attaques comme au **Salvador** ou au **Nigéria**. Dans ce dernier pays, un texte, approuvé par le Conseil exécutif fédéral en juin 2006, prohibe notamment "l'enregistrement par les organes gouvernementaux des clubs, sociétés et organisations gays, quel que soit le nom qui leur est donné" et prévoit cinq ans d'emprisonnement pour toute personne impliquée dans l'enregistrement de telles organisations, ou dans "l'organisation de processions ou assemblées, publicité et démonstration publique de relations amoureuses homosexuelles, directement ou indirectement, en public ou en privé".

Par ailleurs, l'intégrité physique et psychologique des défenseurs reste particulièrement mise à mal dans les pays ou zones de conflits ou de crise, tels que l'**Afghanistan**, la **Colombie**, l'**Irak**, la **RDC**, ou encore le **Sri Lanka**. En **Syrie**, plusieurs défenseurs des droits de l'Homme, notamment MM. Michel Kilo et Anouar Bunni, restent détenus pour avoir signé une pétition appelant à une normalisation des relations entre le Liban et la Syrie. Cette pétition, d'une importance toute particulière, était une initiative conjointe d'intellectuels et de défenseurs des droits de l'Homme syriens et libanais, la première de la sorte.

De même, ceux qui luttent contre l'impunité sont exposés à de fortes représailles (**Centrafrique, Iran, Ouzbékistan**). Par exemple, au **Guatemala**, les membres du Mouvement national des droits de l'Homme du Guatemala (MNDH), ont été l'objet de menaces de mort en référence aux activités d'enquête et d'accompagnement de cas de violations des droits de l'Homme devant les tribunaux.

Dans certains cas enfin, la répression systématique de la part des autorités rend impossible toute activité organisée de défense des droits de l'Homme, comme au **Turkménistan**, en **Corée du Nord**, au **Vietnam**, au **Laos**, ou encore en **Guinée Equatoriale**.

La FIDH appelle donc le Conseil des droits de l'Homme à

- renouveler le mandat de représentant spécial du secrétaire général sur les défenseurs des droits de l'Homme,
- demander aux Etats de coopérer totalement avec la RSSG à la suite de ses lettres d'allégation, et en l'invitant selon ses propres termes de référence,
- demander aux Etats à mettre en oeuvre les recommandations émises par la RSSG à leur égard.

2. COUNTER-TERRORISM AND HUMAN RIGHTS

September 11, 2001 terrorist attacks on the American soil marked a decisive turning point in the history of terrorist attacks as well as counter-terrorism measures and practices. The international community through the United Nations Security Council reacted to these attacks by adopting Resolution 1373 (2001) creating the Counter-Terrorism Committee (CTC) and imposing obligations on member States to raise national capacity to combat terrorism in all its forms. Following that resolution, States have started enacting specific counter-terrorism measures in their domestic law in a way incomparable to what had previously been done.

Yet, in developing their policies, States have been adopting *laws and measures that violate human rights*. Indeed, it cannot be denied today that anti-terrorism practices and policies have, in many instances, resulted in arbitrary detentions, torture, violations to the right to life, to the right to a fair trial by an impartial and independent tribunal, violations to freedom of expression, private life and property, or renditions of asylum seekers suspected to take part in terrorist activities to countries where they may face torture or cruel, inhumane or degrading treatment.

FIDH has always strongly condemned terrorist attacks and understands that it is both the right and the duty of States to find ways to combat terrorism. However, FIDH denounces the clear emerging trend followed by States and which constitutes of increasingly diverting the objectives of the fight against terrorism and sacrificing basic human rights.

The United States, the most pro-active State in that area, and today mostly infamous for its Guantanamo Camp justified by the on-going “War on Terror,” have been repeatedly condemned by international treaty bodies for going too far in disregarding their international obligations. In this year 2006, both the *Committee Against Torture* in May and the *Committee for Human Rights* in July recommended that the U.S. immediately release or try the Guantanamo detainees, end the practise of secret detentions, renditions, and torture, put an end to illegal “harsh” interrogation techniques and inhumane treatment of suspected terrorists, and provide reparations to people upon whom they were applied.¹³

The U.S. are not the only ones who have fallen into the trap of answering to human rights violations by other human rights violations. Many countries have been involved in such practices including in Europe, where some of them collaborated, specially in the case of CIA’s secret Flights. Worrying policies and instruments are being ratified in many other regions of the world, and they clearly lack full respect of States’ international human rights treaty obligations.¹⁴

FIDH strongly believes that anti-terrorism measures may, and should be, compatible with human rights and fundamental freedoms. In fact, all international human rights treaties do provide for derogations and limitations when States are facing emergency serious threats. Last October, FIDH issued a report entitled “[Anti-Terrorism v. Human Rights: The Key to Compatibility](#)” in which was demonstrated how this is true.

Five years after the 9/11 attacks, FIDH calls upon members of the UN Human Rights Council to:

- denounce disproportionately restrictive measures,
- to work for and demand the development and strengthening of effective international, regional, and national systems that would ensure that counter-terrorism measures are systematically compatible with human rights,
- to fully cooperate with UN special procedures, and invite their mandate holders to conduct in situ visits when they require it and according to their terms of reference,
- to implement UN human rights mechanisms' recommendations that call for respect for human rights in the fight against terrorism.

¹³ [See also the Amicus Curiae filed to the US Supreme Court, by the FIDH, CCR and Human Rights Watch in the case Hamdan vs. Rumsfeld](#)

¹⁴ Also, see FIDH November 2005 Report: “[Violations of Human Rights in Sub-Saharan Africa in the Name of](#)

[the Fight against Terrorism.](#)” in French.

3. BUSINESS AND HUMAN RIGHTS

FIDH emphasizes the need to improve the protection of human rights in the activities of transnational corporations (TNCs). The increased ability of TNCs to shift investments from one State to another, in combination with a spectacular reinforcement of investors' rights in both multilateral free trade agreements and bilateral investment or free trade treaties, have resulted in putting TNCs in a bargaining position vis-à-vis States which disempowers the latter, and makes it in some instances difficult, or even impossible, for the States receiving foreign direct investment to effectively regulate the activities of TNCs on their territory.

It is difficult to hold TNCs accountable for human rights violations, not because of their economic weight, but rather because of two other factors which it is our responsibility to address. First, instead of cooperating with one another, States have entered into a destructive competition against one another. Emerging victorious from this battle is not any individual State, but TNCs in general, whose leverage power benefits immensely from this inter-State competition. As host States of foreign investment, States compete against one another in order to attract investors, thus lowering their regulatory barriers to the entry and establishment of investors. Simultaneously, as they are home to certain TNCs domiciled under their jurisdictions, the States seek to protect the rights of the TNCs against the interests of States where their TNCs invest. This is a destructive race, the impact on human rights of which, especially social rights, has been widely documented. Collective action by the community of States is required in order to put an end to this situation.

Second, there remain a number of doctrinal uncertainties concerning the extension to corporations of human rights responsibilities, which have paralyzed the debate on this matter since the adoption of the Norms on the Human Rights Responsibilities of Transnational Corporations and Other Business Enterprises in your Resolution 2003/16 of 14 August 2003. Three questions have been central to the debate following the adoption of this resolution. First, a controversy has arisen about when companies may be said to be complicit in human rights violations committed by others, States in which they operate or business partners. Second, the scope of the 'sphere of influence' of companies, to which their positive obligations to protect and promote human rights extend, has been debated. Third, most significantly, questions have been raised about the acceptability of extending to corporations human rights obligations addressed, in international instruments, to States.

In its reaction to the interim report presented by Professor Ruggie, the Special Representative of the UN Secretary General appointed in accordance with Resolution 2005/69 of the United Nations Commission on Human Rights, to the 62nd session of the Commission on Human Rights, the International Federation for Human Rights (FIDH) has made its view very clear that the doctrinal arguments

leveled against the Norms on the Human Rights Responsibilities of Transnational Corporations and Other Business Enterprises are misdirected, and based on an outmoded, if not simply incorrect, understanding of the potential of international human rights law. At the same time, the FIDH cannot but conclude, as has been concluded by the Special Representative of the Secretary General, that the Norms have failed to gather the necessary political support, as not only certain powerful organisations representing the interests of business, but also certain States, have made no mystery about their hostility to the approach adopted by the Norms.

What can be done? The FIDH shares the view of the Special Representative of the Secretary General that market-based solutions and voluntary initiatives, however valuable they may be, are not an adequate alternative. Such initiatives have limited applicability, as they apply to certain sectors and certain actors only, and refer to different standards. If the Norms cannot gather the support the political support they require to translate into legally binding commitments or operational mechanisms, other routes must be explored. In keeping with the classical understanding of the international law of human rights as primarily addressed to States, we might seek to emphasize the obligation of States not only to protect the human rights of all persons under their jurisdiction, but also to contribute to the protection of human rights outside their territory, both by controlling the private actors on which they may exercise extra-territorial jurisdiction and by taking into account fully their human rights obligations in the negotiation and conclusion of international agreements, especially where such agreements liberalize trade or investment, and thus grant rights to transnational corporations.

- FIDH asks the Council to request the Special Rapporteur on business and human rights to highlight, in the framework of his mandate, the obligations of States to protect human rights they are bound to comply with, both within their national territory and extra-territorially.
- FIDH reminds the Council and the Special rapporteur on human rights and business that it is necessary today to dispel the idea that industrialized States – from which the vast majority of TNCs originate – may remain passive in the face of strategies pursued by those TNCs whose activities they may control, and of which the developing States in need of foreign investment are the main victims.

4. UNIVERSAL PERIODIC REVIEW

Joint statement of FIDH, Human Rights Watch, OMCT, ICJ, ISHR, delivered at the 1st session of the HRC

The creation of the Universal Periodic Review (UPR) is one of the most significant innovations in this new Human Rights Council. Under this system, for the first time, the human rights records of all U.N. Member States regardless of their size, wealth, or military or political importance will be regularly examined through a common mechanism. In establishing the universal review, the General Assembly acknowledged that all states have human rights problems, and room for improving their human rights record. It is crucial in this first year that the Council designs a mechanism that meets the high goals set for it in GA resolution 60/251.

The resolution requires that the review be based on “objective and reliable information.” We propose that the Council designate a session rapporteur, or a panel of experts, from a list of independent experts provided by the Office of the High Commissioner for Human Rights, to assemble all relevant recommendations of treaty bodies and special procedures, reports of the Office of the High Commissioner for Human Rights and relevant U.N. components, as well as NGOs and national human rights institutions reports, and prepare a background note and questions for the state under review. The rapporteur’s background note should be guided by the fundamental human rights enshrined in the Universal Declaration of Human Rights and customary international law, as applicable to all states, as well as all other commitments made by the state under review in treaties, U.N. declarations and conferences, and pledges made while campaigning for election to this Council.

After the State under review prepares its response to the background note and initial questions, the Council itself should engage in a dialogue with the State to examine how well the State is meeting its human rights obligations and implementing recommendations for improvement from special procedures or treaty bodies. It should also consider how the U.N. and other member states might assist the State in improving human rights protection. The process should allow for both presentations and questions by member and observer states of this Council as well as national human rights institutions, regional mechanisms, and nongovernmental organizations. The time demands of UPR, if done right, will be substantial. It is therefore important that the examination of States under the UPR take place outside the Council’s regular sessions.

Each UPR should have an outcome document with appropriate conclusions and recommendations. The session rapporteur, or independent experts, should prepare an initial draft, subject to review and adoption by the Council. The outcome document should identify measures which could assist and encourage the state to meet its human rights obligations, including technical assistance and capacity-building, and where appropriate the

appointment of a country rapporteur.

The crucial work of designing the process for UPR should be entrusted to an open-ended working group including all stakeholders. The meetings should be open and transparent and consider a full range of views. The working group should make a progress report to this Council at each session, leading to the formal adoption of the UPR mechanism no later than spring 2007.

The establishment of Universal Periodic Review presents a historic opportunity for strengthening the promotion and protection of human rights. This Council must seize this opportunity and design a UPR process that will assist states and address the needs of human rights victims in all countries of the world in the decades ahead.

5. REVIEW OF MANDATES AND MECHANISMS (OP6 of GA Res 60/251)

Joint statement of FIDH and HRW, delivered at the 1st session of the Human rights Council

General Assembly resolution 60/251 decided that the Council should maintain a system of special procedures. The special procedures have evolved into an integral part of the United Nations human rights machinery. They were the backbone of the Commission on Human Rights. Their importance was emphasized in the seminar on "Enhancing the effectiveness of special procedures of the CHR," organized by the Office of the High Commissioner in October 2005. The goal of the review should be to strengthen - not weaken - the system.

There is no set formula for rationalizing the special procedures system. Any process must keep in mind that special procedures play many roles including providing independent information on violations of human rights, monitoring ongoing crises and formulating concrete recommendations based on independent expert advice, affording protection and remedies to victims, and addressing non-compliance. In pursuing this review, the Council must look at issues of substance and not merely at numbers.

Based on the record of the existing system and the diverse

needs for expert support for the Human Rights Council, special procedures will likely need to be expanded to suit the demands of human rights protection and assistance worldwide, on both thematic issues and country situations. The Council will look at overlaps but it should also identify gaps in human rights issues currently covered by existing mandates with the view to filling them.

A new dynamic should be established between the Council and special procedures and increased interactive exchanges should be a distinct feature of the upgraded body. There should be more country visits, more interaction between mandates, more joint initiatives, more coordination, more follow up, greater visibility and publicity to special procedures' work, and increased human resources in order for the rapporteurs and other experts to carry out their work effectively. Special rapporteurs, independent experts and working groups should be able to call on the Human Rights Council to place a situation on the Council's agenda. The findings of special procedures should form an integral part of the examination of States under the UPR, along with the treaty bodies.

Special procedures should be invited to contribute to the review process, in particular through continued interaction with their Coordinating Committee.