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INTRODUCTION

On the occasion of 5th session of UN Human Rights Council, the present position paper highlights the priorities of the International Federation for Human Rights (FIDH), for which we would require the UN Human Rights Council to act.

These priorities develop along two main objectives for the session:
- to support and maintain the country procedures,
- to establish robust mechanisms that reinforce the protective capacities of the international human rights institutions.

Support country procedures

The session will be the opportunity to engage in thorough debates with seven country procedures. FIDH would like to underline the prime importance of these reports. Each of these procedures were established following grave and massive human rights violations that deserve a strong reaction of the international community. What FIDH documents in this report is how these situations deserve today to stay on the Council's agenda.

The FIDH regretted the decision of the Human rights Council at its 4th session to drop Iran and Uzbekistan from the 1503 confidential procedure. The authorities of these two countries are indeed today responsible for the severe repression of political oponents and human rights activists, among other ongoing grave and serious human rights violations. Victims of these regimes are now left without an adequate international protection mechanism.

Under cover of a fight against the « politicisation » of the Council, all country specific procedures are targetted. They should rather be considered individually on their merit, following the Council's clear mandate to consider situations of grave and massive human rights violations. This mandate should be distinct from the Universal Periodic Review and special sessions.

The decision to establish a country specific procedure is not an easy one. It comes when countries, confronted with a pattern of grave human rights violations, have failed to cooperate with Special procedures, refused to invite them, or grossely ignored their recommendations. On some occasions, once established, the country rapporteurs are engaged in a thorough dialogue with the concerned government on reforms, and thus, require to remain in place.

All these situations are valid and correspond to the countries that are reviewed at the Council's 5th session. Member States should make sure they are maintained on the agenda.

Establish robust human rights mechanisms

The 5th session should also witness the finalisation of the bulk of the institutional reform, following the request of the UN General Assembly.

FIDH has joined a group of NGOs in publishing a list of 20 critical issues that should be reflected in the final outcome (published shortly). As stated in the document, the effectiveness of the Council will depend on it establishing integrated and comprehensive mechanisms for protecting and promoting human rights. The 20 points are targetted to realise this objective.

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. HRC member States should echo these concerns, either in supporting resolutions on these countries or voicing their preoccupation during the interactive debates.

We would hence require the Council to condemn *inter alia* the massive human rights violations that have occured in ***Darfur*** and the ***Occupied Palestinian Territories.*** The continuous lack of cooperation and disregard for resolutions by launching indiscriminate military operations on the civilian population is intolerable. We expect full cooperation from the Sudan government with the Group of Experts established at the last session of the Human Rights Council.

Disappearances of political opponents and harrassment of human rights defenders continue in ***Belarus;*** in that view FIDH calls for an independent investigation into the disappearances. FIDH also calls for a public condemnation of the deplorable grave human rights violations in the ***Democratic Republic of Congo,*** such as summary executions, arbitrary arrests and disappearances through the adoption of a resolution against impunity by bringing the perpetrators to justice.

FIDH also urges the 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 ***Sudan*** and on ***Democratic Republic of the Congo,*** on ***Cambodia, on Belarus,*** on ***Haiti, and the OPT.***

The Council can no longer remain silent on torture in ***United States of America.*** We believe that in the 2006-2007 Rumsfeld case, the ***German*** Federal Prosecutor, again, failed to fulfill his (her) duties in an independent, impartial and objective manner. In fact, the Federal Prosecutor’s Office has systematically refused to take up a single case under the universal jurisdiction law for the five

years since it was passed.

FIDH calls for the Council to thoroughly debate and act upon the situations of the ***People's Republic of China*** and the ***Russian Federation*** *on* ***forced evictions.*** In ***China,*** urbanism has been justified to evict persons without compensation. In ***Russia***, discrimination against the Roma continue as they are forcibly evicted. As for ***Kenya,*** politically motivated displacements are often accompanied by organised violence in total impunity, causing 380,000 internally displaced persons. The Council should urge these countries to invite the Special Rapporteur on ***Adequate Housing*** without further delay.

In ***Bangladesh, China, India and Pakistan,*** dumping of toxic and dangerous products and wastes persists. The life of many workers are at risk and some are still dying. The Council should seize these governments to remedy this situation and to invite the Special Rapporteur on Toxic Wastes. In ***Colombia, fumigations*** persist endangering local populations and FIDH calls upon Colombia to invite the Special Rapporteur for a visit. On the ***right to food***, inequality in the distribution of wealth and income have caused total undernourishment. The Rapporteur on the Right to Food should also be invited to Colombia.

AFRICA

1. Sudan/Darfur

Human Rights situation in Sudan

The International Federation for Human Rights (FIDH) and the Sudan Organization against Torture (SOAT), would like to express their deep concern over the continuing deterioration of the human rights and security situation in Darfur. The Darfur Peace Agreement (DPA) continues to be unworkable and its flaws have unfolded the much feared consequences.

The numerous recommendations adopted by UN international bodies and human rights mechanisms, since the beginning of the conflict, remain largely unheard and today we are faced with a situation of widespread past and present human rights violations threatening stability, peace and security in Sudan and the wider region.

The Government of Sudan has shown little real commitment to the DPA. Sudanese security forces have continued to carry out attacks on villages in South Darfur causing deaths and displacement of civilian population.

The Government has failed to disarm the *Janjaweed* militias in accordance with article 27, paragraph 367, of the Darfur Peace Agreement, and continues to support and rely on the *Janjaweed* in its attacks against armed groups and civilian population both inside Darfur and in the cross border attacks in Chad.

The Government in its ongoing aerial bombings campaign against armed groups, north of Kutum in North Darfur, has made itself responsible of indiscriminate attacks, destruction, deaths and further displacement of civilian population.

Violence against women continues, with the latest incident reported on 3 May 2007, in which five women were seized by a group of Janjaweed and subjected to torture and several rounds of rape near Saliaa town, north Darfur.

Government resistance to a full and unconditional deployment of a AU/UN hybrid force has further aggravated the security situation of the civilian population and of humanitarian aid workers and AMIS soldiers who have been the target of banditry, assaults and victims of deadly attacks. This has resulted in humanitarian agencies having to pull out or restrict their activities leaving hundred of thousands of internally displaced deprived of any assistance.

The Government has failed to ensure accountability and to end impunity for crimes committed in Darfur and continues to refuse to collaborate with the International Criminal Court, despite UN Security Council Resolutions.

Despite the Government's establishment of the Special Criminal Court for the Events in Darfur, to date most perpetrators have not been brought to justice and only low ranking soldiers have been prosecuted and command responsibility remains largely unaccounted for. Furthermore, immunity for members of the security forces and the interference of military and security officials in cases involving members of the security forces have caused indefinite delays in the examination of cases or lead to their outright dismissal.

FIDH and SOAT call upon the Human Rights Council to:

- condemn the continuing violence in Darfur against civilian population and the campaign of indiscriminate aerial bombardements in Northern Darfur.

FIDH and SOAT urge the Government of Sudan to:

- fully comply with the Group of Experts, established by HRC resolution A/HRC/4/L.7/Rev.2, to ensure the effective follow-up and foster the implementation of the resolutions and recommendations of UN human rights institutions on Darfur;
- grant without further delay immediate, unimpeded and secure access to the UN-AMIS hybrid force in Darfur to ensure protection of the civilian population and guarantee the full access and safety of humanitarian personnel and human rights observers;
- immediately disarm and disband the Janjaweed militias in Darfur;
- enable a more inclusive and participatory peace process, that includes non-signatory rebels and representatives of civil society;
- demonstrate its commitment to the promotion and protection of all human rights and fundamental freedoms by fully cooperating with the International Criminal Court in bringing perpetrators of grave human rights violations committed in Darfur to justice.

2. Democratic Republic of Congo

Situation des droits de l'Homme en République démocratique du Congo

La Fédération internationale des ligues des droits de l'Homme (FIDH) et ses organisations membres en République démocratique du Congo (RDC), la Ligue des Electeurs (LE), le Groupe Lotus et l'Association africaine des droits de l'homme (ASADHO), demandent au Conseil des droits de l'Homme d'adopter une résolution sur la situation des droits de l'Homme en RDC.

La FIDH et ses organisations membres condamnent les nombreuses violations des droits de l'Homme et du droit international humanitaire qui continuent d'être perpétrées sur l'ensemble du territoire, en particulier à l'Est du pays, dans le nord du Katanga, dans le district de l'Ituri et dans les provinces du Nord-Kivu et du Sud-Kivu : exécutions sommaires et extra-judiciaires, disparitions forcées, tortures, arrestations arbitraires, continuent d'être le quotidien des congolaises et des congolais. Ces crimes, sont commis tant par les agents de l'État, principalement les membres des Forces armées de RDC (FARDC) et de la Police nationale congolaise (PNC), que par les milices et groupes armés en activités, notamment les Forces démocratiques de libération du Rwanda (FDLR), les Interahamwe, les « Rastas », les Mai-Mai, etc.

Nos organisations sont particulièrement préoccupées par l'ampleur des viols et autres violences sexuelles perpétrés en RDC. Pour exemple, l'expert indépendant sur la situation des droits de l'Homme en RDC, M. Titinga Frédéric Pacéré, cite dans son dernier rapport[1] le cas de 3000 viols recensés au Katanga en septembre 2006 et dont les auteurs seraient, pour 70% d'entre eux, des militaires. Si certaines mesures (arrestations, jugements et condamnations) ont été prises contre les auteurs de ces crimes, la très large majorité d'entre eux demeurent impunis.

La situation sécuritaire et politique a été en outre marquée par l'attaque de l'armée congolaise contre les éléments de la garde rapprochée du sénateur Jean-Pierre Bemba, les 21 et 22 mars 2007. Selon les informations des ONG et de la Mission des Nations unies en RDC (MONUC)[2], les affrontements à Kinshasa auraient provoqué plusieurs centaines de morts et de blessés parmi la population civile. Les enquêtes menées tant par les ONG que par la MONUC se sont heurtées à de multiples cas d'intimidation de la part des services de renseignement, de la police et de l'armée afin d'empêcher l'établissement des faits et la recherche des responsabilités.

Plus généralement, les défenseurs des droits de l'Homme sont souvent confrontés à d'importantes entraves dans la bonne conduite de leur activités comme l'attestent les nombreux cas présentés dans le rapport 2006 de l'Observatoire sur la protection des défenseurs des droits de l'Homme, programme conjoint de la FIDH et de l'Organisation mondiale contre la torture (OMCT).

La FIDH et ses organisations membres en RDC considèrent que l'impunité des auteurs des violations graves des droits de l'Homme est génératrice d'autres violations. Ainsi, en complément du processus judiciaire en cours devant la Cour pénale internationale (CPI) sur la situation en RDC depuis juillet 2002, il est essentiel et urgent de reconstruire l'appareil judiciaire, garantir son indépendance, et réformer le droit interne afin de s'assurer que les auteurs des crimes les plus graves soient effectivement poursuivis et jugés.

Par conséquent, la FIDH, la LE, le Groupe Lotus et l'ASADHO demande au Conseil des droits de l'Homme

- **d'adopter une résolution condamnant les violations graves des droits de l'Homme perpétrées contre la population civile, dont la responsabilité incombe notamment aux FARDC et aux différents groupes armés présent à l'est du pays;**
- **de reconduire le mandat de l'expert indépendant sur la situation des droits de l'Homme en RDC et lui fournissant l'assistance nécessaire au bon accomplissement de son mandat**

La FIDH, la LE, le Groupe Lotus et l'ASADHO appelent les autorités congolaises à

- **mettre en oeuve les recommandations qui leur sont adressées par l'expert indépendant sur la situation en RDC;**
- **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;**
- **lutter contre l'impunité des auteurs des crimes les plus graves, particulièrement en allouant les ressources budgétaires propres à garantir l'indépendance de la justice et en coopérant pleinement avec la CPI, notamment en adoptant en droit interne une loi d'adaptation du Statut de Rome y inclus la définition des crimes internationaux;**

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1 Rapport de l'expert indépendant sur la situation des droits de l'Homme en RDC, A/HRC/4/7 du 21 février 2007.

2 Cf. le rapport de l'Équipe multidisciplinaire d'enquêtes spéciales de la MONUC ; Rapports mensuels de la Division droits de l'Homme de la MONUC, septembre 2006 – avril 2007 / http://www.monuc.org/News.aspx?newsID=14595 et la déclaration commune des ONG des droits de l'Homme sur les affrontements de mars 2007, Kinshasa, mai 2007.

- **mettre en place une commission d'enquête indépendante chargée de faire la lumière sur les graves violations des droits de l'homme commises à l'occasion de l'attaque de l'armée congolaise contre les éléments de la garde rapprochée du sénateur Jean-Pierre Bemba, les 21 et 22 mars 2007, et de mettre en exergue les responsabilités;**
- **procéder au désarmement complet des groupes armés, assurer leur démobilisation effective et leur réinsertion dans la vie civile;**
- **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;**
- **ordonner l'ouverture d'enquêtes indépendantes et des procès équitables en rapport avec les assassinats des défenseurs des droits de l' Homme, des journalistes et d' acteurs politiques durant la transition;**
- **d'inviter les rapporteurs spéciaux sans plus de delai.**

3. Kenya: Adequate housing

Following a visit at the Kieni Village in Thika District, Central Province (Kenya), Miloon Kothari, the UN Special Rapporteur on Adequate Housing made the following recommendations in a report[3] dated 2004: "*The population in Huruma village is living in extreme poverty, and in such an emergency situation, the Special Rapporteur recommends that the Government establish an emergency assistance programme to ensure that immediate steps are taken to remedy this and similar situations*."

The FIDH fact-finding mission , together with the Kenya Human Rights Commission (KHCR), which was held in Kenya on January 2007 on the issue of « migration and human rights », has concluded that since Miloon's visit no specific measures were taken by the national authorities to improve the living conditions of the inhabitants of the Kieni Village as well as of approximatively 380,000 internally displaced persons (IDPs) who are facing a disastrous humanitarian situation.

Forced to leave their original place of living, IDPs often lose all their property and are obliged to start a new life without perspective of safe return, resettlement, or compensation. If not "hosted" in isolated camps like the Kieni village visited by Special Rapporteur and the FIDH delegates, IDPs are usually landless, and labelled as squatters or slum dwellers. In such living conditions, they face difficulties to find a job or a source of income to pay for medicine or the school fees of the children. Access to public health facilities is also compromised.

Except from urgent assistance provided by humanitarian organisations for one or two months after their displacement, IDPs are left alone as, until now, no particular attention was given to their situation by national authorities or United Nations agencies.

Various causes for displacement include flooding, droughts, state instigated evictions, fights between communities for basic resources, political persecution, and politically motivated displacements often accompanied by organised violence benefiting from impunity. Politically motivated ethnic clashes started one year before the December 1992 first multi-party general elections, when KANU leaders (presidential party of Arap Moi) who wanted at any cost to preserve their political, social and economic "privileges" fuelled ethnic rivalries into violence in many parts of the Rift Valley, Nyanza and Western Provinces. According to FIDH member organisation in Kenya, Kenya Human Rights Commission (KHRC), from 1991 to 1996, over 15,000 people died and almost 300,000 were displaced in the Rift Valley, Nyanza and Western Provinces. In the run-up to the 1997 elections, fresh violence erupted on the Coast, killing over 100 people and displacing over 100,000, mostly pro-opposition people. Other incidences of politically instigated clashes were experienced between 1999 and 2005 mostly in the Rift Valley, Nyanza and the Western Kenya regions.

This violence aimed at creating animosity between communities to split their political inclinations, to frighten whole communities and induce them to vote for the ruling party as a guarantee for their security, or to drive out communities with divergent political view from specific electoral areas. Such recurrent violence every five years at the time of the general elections was facilitated by the fact that the perpetrators and instigators still benefit from impunity. This on-going impunity is indeed worrisome for the near future considering the forthcoming 2007 general elections. There are already many indicators of violence in Subukia, Gucha, Laikoni and Mount Elgon which seems to have been fuelled for political reasons and which led to the forced displacement of hundreds of persons in April 2007.

Consequently, FIDH and KHRC urge the Human Rights Council to

- demand that the Kenyan authorities decisively deal with politically instigated ethnic clashes at the time of general elections. The Kenyan Government should formulate a policy and administrative framework for the prevention of such displacements. One of the main tools to achieve such prevention is to effectively fight against impunity through prompt arrest and prosecution of those individuals responsible for fuelling ethnic clashes for political gain;

- call upon the Kenyan authorities to consider IDPs as vulnerable individuals and as such to immediately take all the necessary measures to respect their rights, notably the right to adequate housing as a component of the right to an adequate standard of living, the right to health and medical care, the right to work and the right for return, resettlement and reintegration, as guaranteed in the human rights international instruments ratified by Kenya and in the United Nations Guiding Principles on IDPs.

FIDH and KHRC would also like to request that the Special Rapporteur follow-up on the implementation of its recommendation made in his 2004 report to the Commission in its sixtieth session.

[3] E/CN.4/2004/48/Add.3, 19 February 2004

Latin America

1. Colombia, sobre el derecho a la alimentación

El derecho a la alimentación en Colombia: Hambre, desnutrición y dependencia alimentaría.

La situación del derecho a la alimentación en Colombia se encuentra bastante lejos de su plena garantía. En buena medida, la desigualdad en la distribución de los ingresos y la riqueza explica esta situación. Según datos del Programa de las Naciones Unidas para el Desarrollo (PNUD) Colombia es el undécimo país con mayor desigualdad del mundo.

Conforme lo establecido por el Departamento Nacional de Planeación (DNP) los porcentajes de colombianos y colombianas en estado de pobreza e indigencia estarían alrededor del 49.2 % y el 14.7 %, respectivamente.

Balance de la situación alimentaria y nutricional de Colombia

Tomando como referencia los datos oficiales de la FAO, el hambre en Colombia muestra un claro comportamiento ascendente, con un ritmo de crecimiento que ya supera la velocidad con que se incrementa esta calamidad en el promedio del mundo en desarrollo e, incluso, África Subsahariana . Este crecimiento sigue en el 2006.

Las cifras más recientes de carácter oficial (correspondientes al año 2005) indican que 12 de cada 100 niños y niñas menores de 5 años sufren de desnutrición crónica; el 44.7 % de las mujeres gestantes son anémicas o el 11 % darán a luz bebés con bajo peso; el 53 % de los menores de 6 meses de edad no reciben lactancia materna exclusiva; el 36 % de la población tiene una deficiente ingesta de proteínas; y, el 41 % del total de hogares colombianos manifiesta algún grado de inseguridad alimentaria.

Hambre y desplazamiento forzado

Colombia es el tercer país a escala mundial con mayor número de personas en situación de desplazamiento forzado interno, superado únicamente por el Congo y Sudán. Tal realidad genera efectos permanentes en cuanto a la situación alimentaria de esta población se refiere.

Según estadísticas de organismos internacionales, un 87 % de los hogares desplazados se encuentra en franca situación de inseguridad alimentaria. No es extraño entonces que del total de población desplazada evaluada por algunos estudios, el 85 % de los hogares manifiesten reducir el número de comidas por falta de dinero, o que el 56 % de sus niños y niñas y el 70 % de sus adultos, se acuesten a diario con hambre[4].

El impacto de la severa situación nutricional de los desplazados y desplazadas puede ejemplificarse con unas cifras adicionales:

1. La desnutrición crónica en niños y niñas menores de cinco años pertenecientes a esta población es de un 22.6 %; es decir, 10 puntos porcentuales por encima de la media nacional y según datos de la Encuesta Nacional de la Situación Nutricional en Colombia-2005[5].

2. Apenas un 18 % de niños y niñas de la población desplazada reciben lactancia exclusiva y con una duración promedio de tan sólo 1.5 meses[6], siendo que las recomendaciones de la Organización Mundial de la Salud hablan de seis meses como mínimo. Esto, obviamente, representa una seria amenaza para la vida e integridad física y mental de esos niños y niñas.

3. El 59.7 % de las mujeres desplazadas gestantes sufren de anemia y en una cifra que supera en 15 puntos porcentuales el promedio nacional[7].

Se ha encontrado que para la población desplazada el principal problema reportado en cuanto a su inseguridad alimentaria, es la incapacidad de generar ingresos suficientes. De hecho, el promedio de los hogares desplazados apenas si consiguen ingresos equivalentes al 68 % del salario mínimo vigente a nivel nacional[8]. Tal situación es más grave en aquellos hogares de jefatura única femenina[9].

La desigualdad en la propiedad de la tierra

En la actualidad Colombia muestra un proceso continuo de concentración en la propiedad de la tierra. De acuerdo con el Instituto Geográfico Agustín Codazzi, alrededor de 2428

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[4] Programa Mundial de Alimentos; Comisión Europea; Organización Panamericana de la Salud. Op. cit. No. 6. pp: 38, 39, 41.

[5] http://www.icbf.gov.co/espanol/resultados.ppt#367,3,RETRASOENELCRECIMIENTOSEGÚNEDAD

[6] Programa Mundial de Alimentos; Comisión Europea; Organización Panamericana de la Salud. Op. cit. No. 6. p: 94.

[7] Op. cit.

[8] Programa Mundial de Alimentos; Comité Internacional de la Cruz Roja. Identificación de las necesidades alimentarias y no alimentarias de los desplazados internos. Bogotá. Marzo 2005.

[9] Programa Mundial de Alimentos; Comisión Europea; Organización Panamericana de la Salud. Estado nutricional, de alimentación y condiciones de salud de la población desplazada por la violencia en seis subregiones del país. Bogotá. Diciembre 2005..

propietarios públicos y privados (0.06%) poseen 44 millones de Hectáreas del territorio registrado catastralmente (53.5%), controlando en promedio 18.093 Ha por propietario. En contraste 2.2 millones de propietarios (55.6%) y de predios (56.8%) corresponden a una estructura de minifundios menores de 3 Ha, lo cual equivale a un 1.7% del territorio registrado catastralmente. Al comparar la primera y la segunda franja de control territorial, encontramos que el territorio promedio de cada uno de los grandes propietarios es equivalente a 6000 veces la propiedad promedio de los microfundistas y minifundistas[10].

Esta tendencia en la distribución de la propiedad genera un uso inadecuado del suelo que pone en peligro la producción de alimentos en Colombia y la economía campesina tradicional. Según cifras oficiales el país solo está utilizando un 37% de la tierra apta para la agricultura, mientras en contraste, la ganadería absorbe alrededor del 208% de la tierra apta para esta actividad. Alrededor de entre 9 y 10 millones de Hectáreas aptas para la agricultura no se están usando para este propósito[11].

Se acrecienta la dependencia alimentaria.

Desde el año 2002 el Ministerio de Agricultura ha mantenido una estrategia de Política exportadora basada en buena medida en la promoción de cultivos no alimentarios, o alimentarios marginales para la dieta básica. La orientación fundamental se centra entonces en 22 productos que serán objeto de apoyo institucional por vías de crédito preferencial o exenciones tributarias. Estos cultivos pueden agruparse en ocho conjuntos:

- **Cultivos de tardío rendimiento**, cuyo ciclo de cosecha dura más de cinco años.: Palma de aceite, cacao, caucho etc.
- **Frutas tropicales**
- **Hortalizas**: Ají, espárrago, cebolla bulbo, brócoli etc.
- **Potenciales exportables**: tabaco, algodón fibra media y larga y papa amarilla.
- **Acuicultura**
- **Tradicionales exportables**: Café, flores, azúcar, plátano y banano.
- **Agrocombustibles:** Etanol a partir de caña de azúcar, caña panelera y yuca, y biodiesel con base en palma de aceite.
- **Otros:** Forestales, carne bovina y lácteos, cafés especiales.

Tal énfasis amenaza tanto a la producción de alimentos básicos para la dieta de las y los colombianos, como a la posibilidad de consolidar un sistema de abastecimiento alimentario basado en el mercado interno y la producción campesina tradicional, fuente tradicional de alimentos en nuestro país[12].

La amenaza de los agrocombustibles.

Uno de los puntos más preocupantes de la apuesta agroexportadora se relaciona con la decisión del Gobierno Nacional de incentivar la producción de agrocombustibles. Aunque en la actualidad Colombia produce un millón de litros diarios de etanol, en la actualidad el Gobierno Nacional está buscando aumentar la producción de agrocombustibles, lo cual traería graves consecuencias para la alimentación de las y los colombianos:

En primer lugar se espera que aumente el área sembrada para los agrocombustibles, mientras se reduce el área sembrada de cultivos alimentarios. Mientras los cálculos oficiales revelaban que el área de cultivos transitorios (arroz, distintas variedades de maíz, sorgo, ajonjolí, papa, trigo, fríjol, maní y hortalizas) tendía a una reducción de 200.000 Hectáreas en 2006. La Palma aceitera pasó de contar con 145.027 Hectáreas en 1998 a 275.317 en 2005. Lo cual indica que mientras en siete años el cultivo de Palma de aceite casi se duplica, los cultivos destinados a la alimentación se vienen reduciendo.

En segundo lugar, los precios de los alimentos tienden al alza gracias a la producción de agrocombustibles. La utilización de Caña para la producción de etanol ha generado que solo en 2006 la panela (una fuente barata de energía para los sectores más pobres) aumentara un 83.07%, (mientras la inflación anual para marzo de 2007 se encuentra en 5.78%). El kilo de Panela pasó de costar 705 pesos en enero a costar 1290 en diciembre, mientras la Harina de maíz subió un 40% durante el año 2006.

Por todas estas razones la FIDH conjuntamente con la Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo le pide al gobierno Colombiano que invite al Relator Especial sobre el derecho a la alimentación a Colombia.

[10] Centro de Investigaciones para el Desarrollo de la Universidad Nacional de Colombia, "Bien-estar y Macroeconomía", 2006, www.cid.unal.edu.co

[11] Instituto Geográfico Agustín Codazzi y Corpoica: www.cid.unal.edu.co

[12] Según el Instituto Geográfico Agustín Codazzi, el principal motor de abastecimiento de productos básicos para la dieta nacional, entre los que se cuentan fríjol, maíz, yuca, tomate, habichuela, arbeja y papa es la agricultura de pequeñas extensiones ligada a la economía campesina. Este tipo de producción predomina en zonas determinadas como "asociaciones de cultivos", ya que éste tipo de tierras se caracteriza por estar compuestas en un 50% por rastrojos, pastos y matorrales, y en un 50% por cultivos, tal situación muestra tanto las dificultades que viven los pequeños productores campesinos, como su habilidad para producir en el marco de la adversidad.

2. Colombia, sobre las fumigaciones

Comunicación sobre las fumigaciones aéreas realizadas en Colombia y en la frontera ecuatoriana

Las organizaciones abajo firmantes: Federación Internacional de los Derechos Humanos (FIDH) y sus ligas miembro en Colombia el Colectivo de Abogados José Alvear Restrepo (CCAJAR), el Comité Permanente por la Defensa de Derechos Humanos (CPDH) y el Instituto Latinoamericano de Servicios Legales Alternativos (ILSA), felicitan al Sr. Relator sobre desechos tóxicos el haberse referido en su intervención, al tema de fumigaciones aéreas con químicos. En efecto, esta práctica es única en el mundo y la población colombiana y ecuatoriana de la frontera, son las únicas que enfrentan sus consecuencias..

El control químico de los cultivos tipificados como ilícitos se practica en Colombia desde 1978, cuando las fumigaciones del cultivo de marihuana se realizaban con el químico –ahora prohibido- Paraquat. Hasta 1992 las fumigaciones fueron una práctica discontinua que se realizó prescindiendo de cualquier marco legal. Entre 1992 y 1999 se recurrió a las fumigaciones como una práctica recurrente para combatir los cultivos de coca y amapola, difundidos en buena parte del territorio nacional. Esta política de erradicación forzosa que no preveía salidas alternativas al campesinado productor, lo que terminó convirtiendo a Colombia en el máximo productor de hoja de coca en el mundo.

Ante esta situación los gobiernos de Colombia y Estados Unidos decidieron implementar el llamado *Plan Colombia*, cuyo principal componente es el de lucha contra el narcotráfico, con énfasis en el programa de fumigación aérea química como medio para disminuir el número de hectáreas de coca cultivadas. El departamento colombiano del Putumayo, fronterizo con la provincia de Sucumbíos en el Ecuador, que tradicionalmente ha tenido una alta concentración de dicho cultivo, ha sido uno de los más fumigados.

Entre 2000 y 2006, lapso de duración de la primera etapa del *Plan Colombia*, fueron fumigadas en Colombia 866.840 hectáreas, que no contribuyeron significativamente a reducir la siembra[13]. A la ineficacia de la política, deben sumarse los increíbles costos de la realización de los operativos militares de aspersión y la violación de múltiples derechos de las poblaciones expuestas a ellas, entre ellos el de la salud, la alimentación, el medio ambiente sano y el derecho a no ser desplazados forzadamente[14].

Pese a que son numerosas las denuncias por muertes, enfermedades o contaminación ambiental derivadas de las fumigaciones, tradicionalmente las autoridades de Colombia y Estados Unidos han refutado que pueda existir algún tipo de impacto en salud o medio ambiente con ocasión de las aspersiones. A través de estudios científicos oficiales contratados por ambos países se ha negado el nexo causal entre las fumigaciones y los impactos denunciados, afirmándose que la contaminación ambiental proviene del uso de diferentes insumos destinados al procesamiento de la hoja de coca, que las enfermedades son endémicas, y se agravan por efecto de condiciones de vida insalubres.

Las denuncias tanto de víctimas de las fumigaciones como de ONG de derechos humanos y de las mismas corporaciones públicas del Estado colombiano, llevaron a que en la Ley de Ayuda Exterior 2002 (HR 2506) que dio vida a la versión directamente contrainsurgente del *Plan Colombia* en el Congreso de los Estados Unidos, se impusiera como requisito la implementación de un sistema legal de recopilación quejas de los afectados para efecto de resarcir los daños causados[15].

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[13] Aunque este periodo inicia (año 2000) con 136.200 hectáreas cultivadas con coca, al año 2005 el Departamento de Estado de los Estados Unidos registró la existencia de 144.000 hectáreas sembradas. Es decir que, después de fumigar casi novencientas mil hectáreas no solamente no se erradicó ninguna, sino que se sembraron siete mil ochocientas más. Datos tomados del documento oficial *Logros de la consolidación de la política de defensa y seguridad democrática,* Ministerio de Defensa, República de Colombia. Enero de 2007. Disponible en el sitio oficial de esta entidad www.mindefensa.gov.co

[14] Ver informe *El Sistema de Aspersiones Aéreas del Plan Colombia y sus Impactos Sobre el Ecosistema y la Salud en la Frontera Ecuatoriana.* Comisión científica ecuatoriana, integrada por Dr. Ramiro Ávila, Dra. Elizabeth Bravo, Dr. Jaime Breilh, Dr. Arturo Campaña, Dr. César Paz-y-Miño, Ing. Luis Peñaherrera, Dr. José Valencia. Abril de 2007

[15] Dicha ley condicionó la asistencia militar hacia Colombia en tanto se demostrara que "(1) La fumigación aérea de los cultivos de coca se lleva a cabo en concordancia con los procedimientos para el uso de los químicos que han sido establecidos por la Agencia de Protección Ambiental (EPA), el Centro para el Control de Epidemias y las compañías manufactureras del químico y, luego de consultar al Gobierno Colombiano, se garantice que las fumigaciones están conformes a las leyes colombianas;(2) Los químicos utilizados en las fumigaciones aéreas, de la manera en que son aplicados, no significan graves riesgos o efectos nocivos para los seres humanos y el medio ambiente;(3) Se establezcan mecanismos efectivos que evalúen las quejas de la población referentes a la afectación de su salud y a los daños de sus cultivos legales causados por la fumigación aérea, así como que se remunere de manera justa a todos aquellos que presenten quejas meritorias; (...).". Defensoría del Pueblo. *Amicus Curiae* presentado al Tribunal Administrativo de Cundinamarca, 2002: *La*

Fue así como se implementó un procedimiento de atención de quejas para evaluar presuntos daños por las fumigaciones a cultivos de subsistencia de los campesinos pero no por afectación a la salud. Entre 2001 y 2006 mediante este trámite fueron examinadas 6429 quejas y sólo 33 de los quejosos, es decir el 0.5% fueron compensados por los daños causados[16], constituyéndose así, en un mecanismo ineficaz de justicia.

En materia de Salud, las máximas autoridades antinarcóticos implementaron en el marco del Plan de Manejo Ambiental (seguimiento a impactos de las fumigaciones en el medio ambiente) una ficha de seguimiento, a la que llamaron "*Plan de Vigilancia Epidemiológica* –PVE-", pero limitándolo a "*un plan de capacitación sobre diagnóstico, tratamiento, prevención y vigilancia de las intoxicaciones con plaguicidas*[17]". Es decir, que el seguimiento en materia de impactos a la salud por efecto de las fumigaciones, se disolvió en un plan general de seguimiento a intoxicaciones agudas por exposición a plaguicidas y no a un plan específico de seguimiento de impactos en la salud por exposición directa a la mezcla química utilizada en las aspersiones.

Es necesario subrayar que las aspersiones se realizan con una mezcla química -de la que se afirma-, es integrada por el herbicida Glifosato y los coadyuvantes POEA y Cosmo Flux. Existe literatura científica sobre el primero, pero no sobre los dos últimos, ni mucho menos sobre los tres mezclados. Ante la falta de certeza o las dudas razonables frente a los impactos que en materia de salud y medio ambiente genera la aplicación de esa mezcla, debe darse aplicación inmediata al principio de precaución, de rango legal en Colombia y rango constitucional en el Ecuador.

El Gobierno ecuatoriano ha manifestado a su homólogo colombiano enfáticamente y en numerosas oportunidades, su inconformidad por las aspersiones, lo cual, durante algunos meses conllevó a su suspensión, siguiendo el compromiso pactado a través de un memorando de entendimiento suscrito por ambos países en diciembre de 2005. Sin embargo, en diciembre de 2006 y hasta el mes de febrero de 2007, fueron reanudadas las fumigaciones y con ellas, la afectación a la población de la frontera.

En el pasado, algunos procedimientos especiales de NU han abordado la temática de las fumigaciones en sus respectivos informes, valga recordar el Relator especial sobre Pueblos Indígenas, el Grupo especial sobre el uso de mercenarios, el Comité de Derechos del Niño. Más recientemente el Relator sobre el derecho a la Salud, visitó Ecuador entre el 14 y el 18 de mayo 2007, para evaluar ese tema. Al finalizar su visita el relator afirmó en su informe preliminar que "existen evidencias creíbles y confiables de que la fumigación con glifosato en la frontera entre Colombia y Ecuador está afectando a la salud física de los habitantes de Ecuador y a su salud mental". Igualmente concluyó que "esta evidencia es suficiente para dar lugar a la aplicación del principio de precaución y, en este sentido, la fumigación debe suspenderse hasta poder dejar claro que no daña a la salud humana".

Nosotros consideramos que la realización de las fumigaciones químicas aéreas no puede depender de la realización de estudios científicos que determinen el nexo causal entre éstas y las afectaciones a la salud, vida y medio ambiente. Existen suficientes evidencias de que efectivamente la población colombiana y ecuatoriana sufren afectaciones que representan claras violaciones a sus derechos humanos. Por lo anterior, y atendiendo al principio de precaución en materia ambiental, las fumigaciones deben ser suspendidas definitivamente y otro mecanismo –no químico ni biológico- de erradicación debe ser implementado.

La FIDH le pide a Colombia de invitar el relator especial sobre los desechos tóxicos y peligrosos y el relator especial sobre la salud física y mental para visitar Colombia sobre el tema de las fumigaciones.

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ejecución de la estrategia de erradicación aérea de los cultivos ilícitos, con químicos, desde una perspectiva constitucional

[16] Según oficio 1569 del 21 de septiembre de 2006 suscrito por Henri Gamboa Castañeda, Jefe del Área de Erradicación de Cultivos Ilícitos de la Policía Antinarcóticos dirigido al Colectivo de Abogados en respuesta a un derecho fundamental de petición.

[17] Según oficio MPS No. 29307 del 15 de febrero de 2007 del Ministerio de Protección Social, suscrito por Lenis Enrique URquijo Velasquez, Director General de Salud Pública dirigido al Colectivo de Abogados en respuesta a un derecho fundamental de petición.

3. United States of America – Germany and the independence of judiciary

Violations of the Principle of Independence and Impartiality of the Judiciary and the Independence of the Legal Profession of Prosecutors in the German Case against Donald Rumsfeld and others for War Crimes

On 27 February 2006, the International Federation for Human Rights (FIDH), the Center for Constitutional Rights (CCR – FIDH member league in the United States), the Republican Attorneys' Association (RAV), and Lawyers Against the War (LAW) submitted a complaint to the United Nations Special Rapporteur on the Independence of Judges and Lawyers, claiming that the German Federal Prosecutor's dismissal of a torture case which was filed by Iraqi citizens against Secretary of Defense Donald Rumsfeld and others was dismissed for political reasons. The complaint was submitted to Mr. Leandro Despouy, on behalf of Iraqi citizens who were victims of torture and cruel, inhumane and degrading treatment when detained by the U.S. military in Abu Ghraib prison and other detention facilities centers in Iraq and Afghanistan.

The criminal case brought under the German Code of Crimes against International Law (CCIL) in November 2004 requested an investigation into war crimes allegedly carried out by high ranking American civilian and military officials, including (former) U.S. Secretary of Defense Donald Rumsfeld and current Attorney General Alberto Gonzales. The charges included violations of the German Code, "War Crimes against Persons," which outlaws killing, torture, cruel and inhumane treatment, sexual coercion and forcible transfers. The Code makes criminally responsible those who carry out the above acts as well as those who induce, condone or order the acts. It also makes commanders liable, whether civilian or military, who fail to prevent their subordinates from committing such acts.

The German CCIL grants German Courts what is called Universal Jurisdiction for the above-described crimes. The recourse to the German universal justice system seemed necessary as the United States has clearly and repeatedly shown that it is unwilling to investigate the criminal responsibility of the officials named in the complaint.

United States' Repeated Threats and Political Pressure on Germany in Order to Obtain a Dismissal of the Rumsfeld Case Constituted a Violation of the Independence of the Judiciary

As soon as the lawsuit against Donald Rumsfeld and others was made public, the Pentagon warned German authorities that such "frivolous lawsuits", if taken seriously by the German judiciary, would affect the broader US-Germany relationship. In addition, the Pentagon canceled Rumsfeld's participation at February 2005 Munich Security Conference until the prosecutor finally rejected the complaint, two days before the conference took place. Deutsche Press-Agentur reported on 13 December 2004 *"Rumsfeld to scrap German visit if probe launched."* By the end of January 2005, as the German Federal Prosecutor still had not officially refused to begin investigating the allegations made in the complaint, the US embassy in Germany announced that Secretary of Defense Rumsfeld had canceled his trip to Munich, while US defense secretaries have rarely missed the Munich Conference.

On 10 February 2005, a day before the Munich conference, the German Federal Prosecutor dismissed the complaint with very limited legal justification. Two days later Secretary of Defense Rumsfeld made his appearance at the Security Conference, where he delivered a speech, confirming that the reason he threatened not to come was directly related to the dismissal of the criminal complaint against him and other high officials.

The behavior of the American Government and especially of the Pentagon to pressure German prosecution authorities to reject the complaint not for legal reasons but for political interests is an irrefutable violation of the universally recognized principles of the independence of the judiciary, in particular established in the "Basic Principles on the Independence of the Judiciary," adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

States also have the crucial duty to ensure that prosecutors can carry out their professional functions impartially and objectively, therefore both the United States and Germany committed a violation of that principle in the present case. Guideline No. 4 of the "Guidelines on the Role of Prosecutors," adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, provides: *"States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability."* The timing of the dismissal combined with the threat not to attend the international conference is clear evidence that the pressure exercised was very strong.

German Prosecutor Did Not Fulfill his Duties in an Independent, Impartial and Objective Manner

The circumstances surrounding the dismissal, the unusual short length of the decision to dismiss and the lack of valid legal arguments or in-depth analysis as well as the lack of reference to the extensive additional evidence and

documents submitted by the plaintiffs to his office in the end of January 2005, all indicate that the Prosecutor failed to act in an independent and impartial manner. This was in violation of the "Guidelines on the Role of Prosecutors." Furthermore, prosecutors have even stronger duties to act in an independent way when the case submitted to them is related to the protection of human rights and to the prosecution of public officials. A crucial provision in the "Guidelines" says that *"Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law."*

Finally, requirements of independence and prompt duty are all the greater when the case submitted provides the prosecutor with evidence of torture, such as the case filed in Germany. The Committee Against Torture did state that a public prosecutor commits a breach of his duty of impartiality if he fails to appeal for the dismissal of a judicial decision in a case where there is evidence of torture. (Communication N° 60/1996, *Khaled Ben M'Barek v. Tunisia*)

The Second Rumsfeld Case

The legal justification for the dismissing in the 2004 case was that, according to the Prosecutor: *"there are no indications that the authorities and courts of the United States of America are refraining, or would refrain, from penal measures as regards the violations described in the complaint."* The passage of the Military Commissions Act of 2006 immunizing American officials and others from prosecution in the United States and much new evidence show this is not the case. Taking account of extraordinary new information that has come to light over the past two years, an updated 400-page complaint was filed in November 2006 by CCR, FIDH and RAV on behalf of 12 Iraqi citizens who were held in Abu Ghraib, and one Saudi citizen still held at Guantánamo. More than 40 organizations and individuals joined the case as co-plaintiffs. Also, Rumsfeld's resignation the week before the filing meant that he could no longer try to claim immunity as a head of state or government official.

On 27 April 2007, Germany's Federal Prosecutor announced the refusal to proceed with an investigation. In the decision, the Prosecutor argued that the crimes were committed outside of Germany and the defendants neither reside in Germany, nor are they currently located in Germany, nor will they soon enter German territory. However, the German law of universal jurisdiction expressly states that it is a universal duty to fight torture and other serious crimes, no matter where they occur or what the nationality of the perpetrators and victims is. What's more, in the 2004 case, three of the defendants were still living in Germany, and yet, the former Prosecutor rejected the complaint.

The prosecutor also stated that investigations would not have had a reasonable chance of succeeding, but in addition to providing extensive evidence in the form of publicly-available documents and government memos, attorneys had secured the cooperation of General Janis Karpinski, former commander of Abu Ghraib and other U.S.-run prisons in Iraq, as well as other witnesses and victims who were willing to travel to Germany to testify before the court in Karlsruhe or meet with prosecutors to help them determine how to proceed with the case.

We believe that in the 2006-2007 Rumsfeld case, the German Federal Prosecutor, again, failed to fulfill his (her) duties in an independent, impartial and objective manner. In fact, the Federal Prosecutor's Office has systematically refused to take up a single case under the universal jurisdiction law for the five years since it was passed.

FIDH, CCR, RAV and LAW ask all members of the Human Rights Council to:

- **reaffirm the independence of the prosecutor, in particular for acts of torture involving public officials.**

- **address its concerns and recommendations to all the parties involved and to publicly shed light on the violations committed respectively by the United States government and the German justice system.**

Asia and Middle East

1. People's Republic of China on 'adequate housing'

FIDH expresses its deep concern regarding forced evictions which constitute continuing and extensive violations of the right to housing, taking place in the People's Republic of China.

Chinese cities are facing important challenges in terms of urbanism. Modernising the cities has become one of the priorities of the Chinese government, especially since Beijing has been chosen to organise the Olympic Games in 2008. Urban modernisation concerns all major cities in China. It includes the necessary destruction and reconstruction of buildings in insalubrious neighborhoods, as well as the renovation of public infrastructures and city transportation networks. However, the so-called modernisation of cities often hides profit-oriented if not speculative projects. Ignoring public interest, they have resulted in forced evictions of citizens and in the demolition of entire neighbourhoods. There are no statistics available on the number of evictions taking place in China; the Centre on Housing Rights and Evictions (COHRE) estimates that at least 1,25 million households were demolished and nearly 3,7 million people were evicted in China in the past decade.

Legal framework

As a result of administrative reforms in the 1980s, the subsidised system of government-owned housing has been replaced by a booming market-driven real estate sector that now constitutes a pillar of China's rapid economic growth. Being profit-oriented, the market does not address housing needs. Local authorities ignore their obligations and act as private players on the market, in collusion with real estate developers, thus neglecting public interest. No significant measures have been implemented by the central government to put an end to these illegal practices.

China has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides in Article 11 for the *« right of everyone to an adequate standard of living [...], including [...] housing, and to the continuous improvement of living conditions »*. As mentioned in the General Comment 4 adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR) in 1991, *« instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances.»*

FIDH welcomes the *Basic Principles and Guidelines on Development-based Evictions and Displacement* included in the reports of Mr. Miloon Khotari, the UN Special Rapporteur on Adequate Housing, in March 2006 and February 2007. As stressed by the Special Rapporteur, *« forced evictions constitute gross violations of a range of internationally recognized human rights... »* and *« must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law. » (para.6). « Forced evictions intensify inequality, social conflict, segregation and "ghettoization", and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous people »* (para.7).

The Chinese domestic legal framework is based on constitutional rights and relocation regulations. The Constitution recognises the right of the citizens to own houses.

A long awaited legislation on Property Rights has been adopted on 16 March 2007 by the National People's Congress, and will enter into force in October 2007. FIDH welcomes that legislation which aims at clarifying the State, collective and individual property rights and provides for a uniformed system of registration of real property rights in order to ensure legal security. However, on the specific issue of expropriation of real property, the legislation does not bring about significant improvements since it reiterates that expropriation may take place "for the purpose of public interest", without defining this notion which is currently being widely misused in China.

To regulate the management of demolitions and forced evictions, the State Council published the ***1991 Regulations for Management of Urban Residential Demolition and Eviction***, which entered into force in November 2001 and the more recent ***National Regulations for Urban Residential Eviction and Demolition Administrative Arbitration*** of December 2003, entered into force in March 2004. Although those regulations provide limited protection for victims of forced eviction, the safeguards are clearly insufficient, notably for what regards the right of residents to be timely informed and consulted in the framework of the eviction process. China consequently still lacks adequate legislation for the protection of the right to housing, the prohibition of forced eviction and the definition of the exceptional circumstances and strict conditions in which they may take place, in conformity with international human rights standards.

In addition, local governmental authorities often ignore national rules regarding eviction and demolitions, in particular the legal guarantees for residents. Regulations passed by local legislatures, despite references to national regulations in general terms, do not, in practice, provide the same protection for evicted dwellers.

Relocation and evictions

Modernisation, in the name of « public interest », appears to have become the key excuse for the authorities to evict the population in order to pursue lucrative projects. As the construction sector is highly competitive and profitable, corruption is widespread throughout the country. Local governments are often in collusion with developers. Affected residents are informed about eviction at a very late stage, through informal means and without detailed information, while CESCR clearly states that protections for evictees include *« adequate and reasonable notice [...] prior to the scheduled date of eviction »* and *« information on the proposed evictions... ».*

Lack of adequate compensation for evictees constitutes a serious violation of both Chinese laws and international standards. In principle, compensation may mean resettlement to a new house and/or monetary compensation and is clearly provided for by General Comment no. 7 of the CESCR and Chinese national regulations adopted in 2001. However, citizens are rarely given satisfactory resettlement or adequate compensation, if any.

As regulations do not sufficiently protect citizens' rights and are very loosely enforced, and the judiciary does not offer an effective remedy, the only recourse for evictees is to refuse to sign any agreement and resist relocation as long as they can, hoping that developers will offer them a fair compensation. This situation leads to inequality in compensation, which consequently does not depend on objective criteria.

Resistance and repression

In theory, citizens seeking remedies in case of violation of domestic regulations on demolition and eviction must request an administrative arbitration, which is managed by the local administration. However, in most cases, local authorities are both parties and judges, and citizens can expect no protection from such proceedings. Litigation before the courts is not a reliable option either for citizens because of the lack of independence of the judiciary.

Therefore, victims of forced evictions use various forms of public protest to draw the attention of the central authorities and the public to their plight. They display banners and organise demonstrations and petitions. Victims of forced eviction also try to alert the national media, since local media is closely controlled by the local authorities, or depend financially on the developers and real estate companies. Internet also plays an important role of alert and exchange of information among Chinese citizens from various regions.

Intimidation, harassment and violence, taking the form, *inter alia*, of a purposely worsening of the neighbourhood sanitary environment are frequently used to proceed with evictions in case of resistance. In addition, petitioners going to Beijing to alert the central government are often forcefully sent back home, sometimes violently, without getting any redress.

When they do not become homeless, the evictees have to live in smaller apartments in remote suburbs or with relatives. So, paradoxically, urban modernisation contributes to insalubrity, precariousness, marginalisation and impoverishment. In the absence of an effective welfare housing policy in order to alleviate such disastrous consequences on the population, this makes people more vulnerable to further violations of their rights (rights to food, water, health, education, work).

Recommendations:

FIDH calls on the Human Rights Council to urge the Chinese authorities to:

- Adopt full-fledged legislation replacing the existing National Regulations of 1991 and 2003, enshrining the right to housing and expressly prohibiting forced eviction as a principle, in conformity with the ICESCR;
- Establish a meaningful and well-funded welfare housing program in order to ensure full respect of Article 11 combined with Article 2.1 of the ICESCR, which oblige States to use "all appropriate means" to promote the right to adequate housing;
- Ensure that the current national regulations, and later the full-fledged legislation, are enforced against State agents or third parties who carry out forced evictions illegally;
Put an end to any form of repression against citizens peacefully advocating for the respect of their housing right, as well as to the lawyers defending them;
- Implement the recommendations of the UN CESCR of 2005, notably provide information relating to the number of persons evicted within the last five years;
- Address a standing invitation to all UN independent human rights mechanisms, in particular the UN Special Rapporteur on the right to housing.
- Incorporate the *Basic Principles and Guidelines on Development-based Evictions and Displacement* into national legislation and policy.

2. Cambodia

The International Federation for Human Rights (FIDH) and its member organisations in Cambodia, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and the Cambodian Human Rights and Development Association (ADHOC) express their deep concern regarding the situation of human rights in Cambodia.

Despite the recommendations made by Mr. Yash Ghai, the UN Special Representative of the Secretary General on human rights in Cambodia, in September 2006, before the UN Human Rights Council, little progress has been made. The Cambodian government has ratified 13 human rights international instruments and the Constitution of the Royal Kingdom of Cambodia has incorporated the Universal Declaration of Human Rights. However, Cambodians are increasingly subject to a wide range of human rights abuses – often committed by State personnel.

Freedom of expression and association

Over the past months, there has been continued threats to freedom of speech and freedom of association, although those rights are guaranteed under the Cambodian Constitution and the international human rights instruments that Cambodia has ratified.

While 2005 was characterised by the arrest and detention of civil society activists, 2006 was predominantly characterised by threats and intimidation directed against human rights defenders and community leaders who were engaged in efforts to protect the rights of the poor as well as ethnic communities.

Human rights defenders continue to be the target of harassment, intimidation and other obstructions to their work. The most serious attacks – such as physical assault or arrest and imprisonment – are increasingly being directed against community activists, trade union leaders and other representatives of marginalized and vulnerable groups. Reflecting an increase in conflicts over land and other natural resources, as well as worsening labor conditions, this is a trend which is unlikely to be reversed in the near future. In 2006, LICADHO documented 71 community and labor activists who were illegally detained and/or had spurious charges brought against them.

The removal of custodial sentence for defamation under Cambodia's criminal law on 26 May 2006 (Article 63 of the transitional criminal law – UNTAC Law) has been an important development. However, there is a high possibility of misuse by political forces—which control the law enforcement agencies, the prosecution and the courts—to fine individuals of up to 2,450 USD, an amount above the average yearly income of a Cambodian citizen. In addition, imprisonment can be used to coerce a guilty defendant to pay fines. Dam Sith, editor of the local newspaper « Moneaksekar Khmer », was condemned to a fine for disseminating false information while academic Tieng Narith was arrested on 5 September 2006 for writing strong criticism of the government in one of his books. He was condemned on 28 February 2007 to two years and a half in prison, and a fine.

On February 24, Hy Vuthy, president of the Free Trade Union of Workers in the Kingdom of Cambodia (FTUWKC) at the Suntex garment factory, was shot dead while riding his motorbike home after finishing his night shift at the Suntex factory in Phnom Penh's Dangkao district. Hy Vuthy is the third FTUWKC official to be killed in three years. Chea Vichea, the union's President, was shot dead in January 2004. In May 2004, Ros Sovannareth, the FTUWKC President at the Trinunggal Komara factory, was murdered. The killing of Hy Vuthy is the latest in a string of attacks and assassinations of union activists in Cambodia. During 2006 there were several violent attacks against FTUWKC officials at Suntex and the neighboring Bright Sky factory. Such a pattern of violence is extremely likely to have a chilling effect on the members and leaders of FTUWKC and other union activists throughout Cambodia.

Arbitrary denials of peaceful protests has been continuing throughout 2006, as well as violent crackdowns on peaceful demonstrations and strikes, in particular by garment workers and people protesting against eviction from their land. In 2006, LICADHO documented 39 cases of demonstrations that were violently dispersed by armed forces.

Women's rights

FIDH, and its leagues in Cambodia, LICADHO and ADHOC, note with concern that although Cambodia is beginning to recognise the significance of violence against women, the extent of the Government's willingness to educate the judiciary, the police and the public on these issues, and to implement laws and policies that prevent such violence and protect victims, is still quite limited. Main violations of women's rights include rape, domestic violence, as well as trafficking and sexual exploitation due to the fact Cambodia is a source, transit and destination country for victims of human trafficking.

Human rights violations in connection with land disputes

The sharp increase in conflicts over land is one of the most disturbing trends to emerge in recent years, with far-reaching consequences for human rights in Cambodia, where an estimated three-quarters of the population depend on the land for survival. Many of the instigators of reported cases of land grabbing were soldiers, police or local government officials. Threats, intimidation and violence are often used to bring about evictions and fair compensation is all too rarely considered. Moreover, Cambodia is involved in extra judicial killings, involving mainly police officers shooting protesters during land

protests.

The new National Authority for Land Dispute Resolution (NALDR) creates another level of bureaucracy that further confuses the situation, and undermines the prerogative of the Cambodian courts to definitively adjudicate land cases. In reality, Cambodia's Land Law (and a patchwork of associated sub decrees) is often manipulated by corrupt officials or totally disregarded. The negative impact of land concessions has been well documented, most recently by the former UN Special Representative of the Secretary General for Human Rights in Cambodia, Peter Leuprecht. The Government has signed contracts handing over plots of land up to 176,000 hectares in deals that have been kept secret despite international calls for transparency. Furthermore, NGOs working on land-related issues are facing increasing threats and obstacles to their work.

Lack of Independence of the judiciary and prevailing impunity

Cambodia's judiciary continues to be characterised by corruption, incompetence and political bias. The judiciary continues to be used as a tool of the government in political cases, and as a theatre of corruption. The Supreme Council of Magistracy and the Constitutional Council - established under the Constitution to guarantee the independence of the judiciary and the compatibility of laws with the Constitution - need to be strengthened and safeguarded against executive interference.

In addition, many of the laws used today in Cambodian courts were enacted prior to Cambodia's accession to the major international human rights treaties and the adoption of the current Constitution in 1993. As a result, many of these laws are inconsistent with Cambodia's international human rights obligations. The long-delayed adoption of key pieces of legislation (Criminal Code, Code of Criminal Procedure, Civil Code, Code of Civil Procedure, Organic Law on the Organization and Functioning of Courts, Law on the Status of Judges and Prosecutors, Law on Anti-Corruption), has still not progressed.

The absence of effective action to prosecute police, soldiers and government officials who commit human rights violations continues to deeply undermine any sense of justice in Cambodia and to fuel further violations. Impunity in Cambodia thrives on a symbiotic relationship between those with political and economic power and the armed forces and police.

On March 12th, 2007, a panel of three judges upheld an unjust 20 years prison sentence against two innocent men, Born Samnang and Sok Sam Oeun for the assassination of the trade union leader Chea Vichea in January 2004. They were condemned in the absence of convincing evidence and based on confessions elicited allegedly under torture. This case illustrates a perfect example of miscarriage of justice.

Recommendations :

FIDH, LICADHO and ADHOC call on the Human Rights Council to

- renew the mandate of the Special Representative on Cambodia

- to adopt a resolution on the situation of human rights in Cambodia, requesting the authorities to:

- Guarantee the fundamental freedoms enshrined in the Constitution and the international human rights instruments applicable in Cambodia, including the right to freedom of expression and the right to freedom of peaceful association and assembly;

- Pass the above-mentioned key legislation in full compliance with international human rights standards and proceed in their full implementation ;

- Create an environment that allows the Supreme Council of Magistracy and the Constitutional Council to carry out their constitutional mandate independently and impartially;

- Undertake thorough investigations and prosecutions of members of the security forces and government officials – especially senior officials – implicated in human rights abuses and corruption;

- Implement existing Land Law and sub-decrees relating to land, draft a sub-decree defining the roles and limitations of the National Authority for Land Dispute Resolution, and strengthen the Cadastral Commission and courts to ensure stable land tenure

- Establish clear benchmarks for the implementation of the recommendations of the United Nations Treaty bodies on human rights and more generally its international human rights obligations.

3. Occupied Palestinian Territories

On the eve of the 40th anniversary of the Israeli occupation of the Gaza Strip and the West Bank including East Jerusalem, the International Federation for Human Rights (FIDH) remains deeply preoccupied by the grave human rights and humanitarian law violations committed in the Occupied Palestinian Territories (OPT).

FIDH further deplores the refusal by Israel to let the Human Rights Council (HRC) mandated fact-finding mission investigate the human rights violations in Beit Hanoun, despite the follow-up resolution adopted by the HRC at its 4th session on March 13, 2007 (A/HRC/4/L.2).

HRC's resolution A/HRC/4/L.2 called upon Israel to "*end its military operations in the Occupied Palestinian Territory, abide scrupulously by the provisions of international humanitarian law and human rights law, and refrain from imposing collective punishment on Palestinian civilians*" and to provide "*immediate protection to the Palestinian civilians in the occupied Palestinian territory in compliance with human rights law and international humanitarian law.*" It additionally calls for Israel's cooperation with the fact-finding missions.

Since this resolution, the overall situation in the OPT has deteriorated. Israel launched a new military operation in the West Bank. On the morning of 21 April 2007, Israeli Defense Forces (IDF) raided and fired upon several homes in Kufor Dan village and turned them into military sites. During this operation a member of the Palestinian police was shot dead while standing on his roof in civilian clothes. FIDH reminds that such use of force is a violation of the fourth Geneva Convention

From 3 to 9 May, the Israeli army conducted 37 military incursions into Palestinian communities in the West Bank and three in the Gaza Strip. During these incursions, 60 Palestinians were arrested in the West Bank and four Palestinians were arrested in the Gaza Strip. 32 Palestinians were killed and 102 injured in direct relation to Israeli raids from 17-24 May, many of whom were reportedly civilian non-combatants.

In addition, internal Palestinian fighting has continued since the Hamas-Fatah unity government was formed in March. Tens of people were injured in the crossfire of the internal clashes, including two children on the afternoon of 19 May. These events illustrate the rising tensions between the rival groups inside the OPT. A ceasefire was signed between Hamas and Fatah forces in the Gaza Strip on 19 May.

Restrictions to the freedom of Movement

The Israeli army continues to violate Palestinians' freedom of movement, by imposing severe restrictions on the movement of Palestinian civilians in the Gaza Strip and the West Bank, including occupied East Jerusalem.

The Rafah International Crossing Point has been remaining under closure since June 25, 2006, except for one day in May 2007. As a result, only few Palestinian patients have been able to travel to hospitals in Israel and the West Bank. FIDH, informed by its member organization PCHR, notes that commercial crossings were partially reopened, but many goods and medical supplies are still missing in markets in the Gaza Strip.

On 22 April 2007, the IOF imposed a total closure on all occupied territories on grounds of a holiday. In addition, the IOF maintained a strict siege on the Gaza Strip by closing all of its borders.

The Israeli army increased the siege imposed on the West Bank by separating Jerusalem from the rest of the West Bank. The army also established checkpoints throughout the West Bank, imposing extremely strict restrictions on Palestinian movement.

The new Erez International Crossing Point is under new burdensome procedures. Palestinians from the Gaza Strip and the West Bank now have to obtain permits from the Israeli Defense Forces (IDF) Civilian Administration; Palestinians living in East Jerusalem have to hand their identity cards to the Israeli Ministry of Interior to get travel documents. In the past, they had to hand identity cards to the IDF at Erez crossing. This procedure targets in particular 800 to 1000 women from East Jerusalem married to men in the Gaza Strip.

The closure of the border crossings amount to a form of collective punishment against the Palestinian civilian population. These measures further constitute violations of the right to freedom of movement as enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Settlement Activities

The settlement activities have continued and worsened all over the West Bank and in East Jerusalem, since March 2007. Israeli settlers living in the OPT continually attack Palestinians and their property. The Israeli army further continues to destroy civilian property for the purpose of settlement expansion.

On 5 May 2007, Israeli settlers violently beat a Palestinian civilian in the Msodat Yehuda settlement. On May 6, 2007, Israeli settlers set fire to planted land in Rameen village, and the Israeli army prohibited fire fighters from reaching the land in a timely manner. On 8 May the army took over a building in Wadi al-Jouz, allegedly because it was built without a license. Additionally on the same day, the army demolished a 222 square-meter house in al-Eissawiya village, east of Jerusalem.

FIDH recalls that the establishment of settlements violates international humanitarian law. Article 49 of the Fourth Geneva Convention prohibits the occupying power from transfering citizens from its own territory to the occupied territory (Article 49). The Hague Regulations prohibit the occupying power to undertake permanent changes in the occupied area, unless these are due to military needs in the narrow sense of the term, or unless they are undertaken for the benefit of the local population.

Moreover, the settlements lead to the infringements of international human rights law as it deprives the Palestinians of their rights to self-determination, equality, property, adequate standard of living, and freedom of movement.

In addition, FIDH stresses upon the necessity to intervene to put an immediate end to the Israeli destruction of Islamic holy sites in Occupied Jerusalem. Israel was officially planning to replace a damaged wooden bridge leading to Al Aqsa Mosque with a stone ramp. Following protests of Palestinians, the mayor of Jerusalem has decided to stop these works. Nevertheless, separate excavations will continue, which may endanger Al Aqsa foundations. FIDH and PCHR, recall that these works constitute a violation of cultural and religious rights. Moreover, the destruction of Islamic holy sites by the Occupying power constitute a violation of international humanitarian law.

Construction of the Annexation Wall

Construction of the annexation wall inside the West Bank has been continuing. It has been accompanied by the creation of a new administrative regime, the "permit regime" turning the lives of Palestinians living near the wall and those who make a living from farming, in particular, into a bureaucratic nightmare.

On 4 May 2007, dozens of Palestinian protesters were arrested as they tried to cross the gate of the wall in protest of its construction. The Israeli army also fired rubber-coated metal bullets into the crowd and violently beat demonstrators.

Around Occupied East-Jerusalem, the length of the wall will be 180km, out of which 5km will follow the Green Line. The construction of the wall results in the destruction of large amounts of property and in violation of the UDHR and customary international law. The construction of the wall also deprives Palestinians from basic rights granted by the ICESCR and violates the right to work, the right to an adequate standard of living, including the right to food, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right to education.

Serious violations of economic and social rights in the OPT

As previously stated by FIDH, following its mission in the OPT between 25 June and 2 July 2006, poverty and unemployment rose in dramatic proportions in the Gaza strip and in the West Bank.

The salaries of the civil servants of the PA have not been paid since March 2006. 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. The recent transfer of Tax payment by Israel has not benefited the Palestinian population that remains in an extreme dire financial situation.

Recommendations

- FIDH therefore calls upon the Human Rights Council to condemn Israel's continued disregard for current and past resolutions adopted by this body, and violations of international human rights and humanitarian law.

- FIDH also calls upon the High Contracting Parties to the Fourth Geneva Convention to fulfill their obligations under the Convention and to ensure protection for Palestinian civilians in the OPTs.

4. South Asia (Bangladesh, China, India and Pakistan) on 'toxic waste'

The International Federation for Human Rights (FIDH), on behalf of the International NGO Platform on Shipbreaking[18], would like to raise its concerns regarding the negative impact on human rights of the illicit movement of waste linked to the breaking of ships in South Asia.

FIDH welcomes the fact that the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights has been attentive to the issue of shipbreaking as part of his mandate. However, in spite of an increased international awareness on the issue in the past years, no significant improvement of the working conditions on shipbreaking yards has been noted.

None of the sites used for ship dismantling in South Asia (Bangladesh, China, India and Pakistan) where more than 80 percent of today's end-of-life vessels are dismantled, have containment to prevent pollution of soil and water, few have waste reception facilities, and the treatment of waste rarely conforms to even minimum environmental standards. Heavy metals, asbestos, dangerous levels of organotins, and cancer-causing poly-aromatic hydrocarbons (PAHs) onboard end-of-life-vessels contaminate the workplace and surrounding environment. The levels of some of the pollutants in the soil and sediment in and around the shipbreaking yards are high enough to warrant the classification of these soils as hazardous wastes, and because many of the toxics released in the course of shipbreaking are persistent and bioaccumulative in nature, the toxics will remain present in the local environment for very long periods of time. Already, according to inhabitants and fishermen living along and close to the shipbreaking yards in Bangladesh, it is increasingly difficult for fishing communities to maintain their traditional livelihood. However, to date there is no discussion about cleaning up such toxic hot-spots.

At the shipbreaking yards, unions' rights are *de facto* extremely restricted and national legislation on workers' rights is not properly enforced. Low wages correlate to a serious lack of infrastructure and resources to enforce laws, monitor compliance, provide training and education; access to clinics is poor, protective equipment is scarce or inexistent and the workers are thus daily exposed to a deadly cocktail of toxic substances released when dismantling the end-of-life vessels. According to a report submitted to the Indian Supreme Court in September 2006[19], one out of six workers at Alang suffers from asbestosis. Further, the fatal accident rate is said to be six times higher than in the Indian mining industry.

Several reports by the NGO community, DNV[20] and the ILO[21] have documented this unacceptable situation. A report published in 2005 by Greenpeace and FIDH provided an in-depth look into the human cost of today's shipbreaking practises[22]. Causes of death include explosions, fire, suffocation and accidents caused by falling steel beams and plates. Further, most of the occupational toxicity problems involve chronic toxicity which creates debilitating disease and death over the course of many years. Some cancer types and asbestos related diseases will only occur 15 to 20 years later. If one were to include these 'hidden' deaths, Greenpeace and FIDH estimate that the total death toll of shipbreaking practices in the world over the last 20 years might well be in the thousands. Furthermore, apart from casualties, many more workers become severely ill or are permanently handicapped.

Thousands of workers have died and are still dying due to the multiple hazards of shipbreaking as practised today in South Asia, leaving of widows and orphans without resources. The total death toll from shipbreaking will further increase considerably as more inexperienced and unskilled labourers are recruited to deal with the increasing numbers of single-hull tankers and accumulated number of vessels to be scrapped in the coming years.

A ship owner simply chooses to scrap a ship at the shipbreaking yard offering the highest price, without taking into account the disastrous safety and working conditions, at the expense of the workers' health and safety and in violation of international human rights and environmental law. Due to inexistent or not-enforced labour and environmental standards, as well as the cheap labour and the absence of expensive machinery, South

[18] The members of the Platform areBan Asbestos Network India, Basel Action Network, Greenpeace, Bellona Europa, European Federation for Transport and Environment, North Sea Foundation, International Federation for Human Rights, Ban Asbestos, L'Association pour le Paquebot France, Corporate Accountability Desk India, Bangladesh Environmental Lawyers Association and Young Power in Social Action.

[19] Report of the Committee of Technical Experts on Shibreaking activities, Chairman Dr. Prodipto Ghosh, Writ Petition No. 657 of 1995, 30 August 2006.

[20] http://www.ilo.org/public/english/protection/safework/sectors/shipbrk/index.htm

[21] The report can be downloaded fromhttp://www.fidh.org/article.php3?id_article=2910. Several other reports on shipbreaking can be downloaded from http://www.greeanpeace.org/shipbreak

[22] There is an estimated back lag of 15 mill LDT due to the current high freight rates. See COWI…… June 2007

Asian shipbreaking yards have extremely low operating costs.

At the end of 2005 the IMO decided that it will develop a new binding Convention for the Safe and Environmentally Sound Recycling of Ships. The NGO Platform on Shipbreaking, while initially applauding and accepting that the IMO bears responsibility to address the issue in an appropriate way and with the required "equivalent level of control" as that found in the Basel Convention, currently finds little evidence that this will take place. There is a clear concern that the IMO Draft Convention is at present so weak that it places no substantial additional legal obligations or financial incentives for shipbreaking countries or shipowners to improve the situation.

Glaringly absent from the IMO Draft Convention is *any* attempt to address the human rights consequences of the global trade in hazardous ships, and the clarion call, made as early as the late 1980s for the minimization of transboundary movements of wastes in particular to developing countries. The IMO effort unfortunately continues to evade this most fundamental issue of concern about shipbreaking practices today – that is, the exploitation of weaker economies and desperate labour forces by those wishing to find cheap disposal routes for high-risk wastes.

The IMO Convention is further not expected to be adopted before 2009 and ratified at the earliest another six years later. This is too late to deal with the single-hull-oil-tanker fleet. Effective measures must be immediately adopted to strengthen the capacity of the countries of destination to deal with end-of-life ships in an environmentally sound manner, respectful of the safety and health of the shipbreaking yards' workers and local communities living nearby. OECD countries should also urgently develop adequate facilities in order that end-of-life ships be pre-cleaned of their toxic materials before they are sent for dismantling. A fund fed by ship owners and governments supporting the improvement of working conditions at shipbreaking yards and to compensate victims and their families should also be created.

For more than 10 years shipbreaking has been the issue of public debate. However, no real changes to the unacceptable situation on the ground have taken place, instead the "race to the bottom" continues and the polluters, i.e. the shipowners, continue to avoid bearing the costs of protecting human health and the environment.

Recommendations

FIDH and the International NGO Platform on Shipbreaking call on the Human Rights Council:

- to respect international human rights, including fundamental rights at work in countries where shipbreaking yards are located;

- to invite the Special Rapporteur on the Adverse Consequences on the Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights to visit shipbreaking yards;

- FIDH and the International NGO Platform on Shipbreaking call on the Special Rapporteur on the Adverse Consequences on the Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights to take part in the negotiations of an International Convention on the Safe and Environmentally Sound Recycling of Ships in order to make sure the protection of human rights of workers and local communities is duly considered.

EUROPE

1. Belarus

FIDH and its member organisation in Belarus, Human Rights Center "Viasna", express their deepest concern at the ongoing grave human rights violations in Belarus.

Enforced disappearances of political opponents

The Belarusian government failed to investigate effectively the disappearance of Yuri Zakharenko, former Minister of the Interior (disappeared on 7 May 1999), Victor Gonchar, former Vice-President of the Parliament of Belarus (disappeared on 16 September 1999), Anatoly Krasovski, businessman (disappeared with Mr Gonchar), and Dmitri Zavadski, cameraman for the Russian TV channel ORT (disappeared on 7 July 2000). Moreover, in a report on disappearances in Belarus presented to the Committee on Legal Affairs and Human Rights of the Council of Europe's Parliamentary Assembly, the rapporteur Mr. Pourgourides said that "*the elements collected (...) have lead to believe that steps were taken at the highest level of the State to actively cover up the true background of the disappearances, and to suspect that senior officials of the State may themselves be involved in these disappearances*"[23]. Since then, no actual inquiry was led on these allegations.

Criminal prosecution of the members of NGOs and political parties

The Criminal Code of the Republic of Belarus (notably Article 193.1, as amended in 2005) foresees criminal penalties for activities carried out in the framework of "suspended" or "liquidated" associations or foundations. This law blatantly violates freedom of expression and association, both enshrined in the Constitution of Belarus as well as in the International Covenant on Civil and Political Rights. These regulations have been used to condemn a number of Belarusian activists to prison sentences[24].

On August 4 2006, four members of the NGO « Partnerstva » (Partnership) were sentenced by the Tsentralny District Court of Minsk: **Enira Branickaja** and **Aliaksandr Shalajka** were sentenced to six months' imprisonment, **Cimafej Dranchuk** to one year and **Mikola Astrejka** to two years' imprisonment.

On November 1st 2006, the leader of the unregistered NGO « Malady front» (Young Front) **Zmitzer Dashkevich** was sentenced by the Oktiabrsky District Court of Minsk to 1,5 years of imprisonment. On May 10th 2007 new criminal cases were open under article 193-1 against members of the «Malady Front», **Ivan Shyla** and **Jaraslav Gryschenia**.

On May 30th 2007, **Barys Haretski, Dzmitry Khvedaruk, Aleh Korban and Nasta Palazhanka,** members of the «Malady Front», were judged under the same article of the Criminal Code. Nasta Palazhanka received a warning, the others were condemned to fines. This sentence, considered as particularly lenient, should be considered as a result of the attention that the international community draw to this case.

Arrests and prosecutions based on political grounds are systematic. In 2006 alone, close to 1000 individuals were victims of administrative arrests and more than 20 people were prosecuted. In the same year, hundreds of members of political parties were detained, arrested or otherwise repressed by authorities. Some of them were imprisoned for long terms, such as the candidate to the presidential position and chair of the Belarusian Social Democratic Party **Aliaksandr Kazulin**, condemned to 5,5 years' imprisonment.

Dozens of students were expelled from high schools for their political views. Administrations of a number of state institutions and enterprises fired people due to their political opinions.

Violations of the right to peaceful assembly

The law *On Mass Events in the Republic of Belarus* (as amended in 2003) seriously restricts the freedom of peaceful assembly and freedom of expression, in violation of the Belarus Constitution and of the International Covenant on Civil and Political Rights. These mass events can be demonstrations but also mere meetings.

Article 9 of that law confers to local executive bodies the right to determine the locations where "mass events" are authorized and those where they are prohibited. These administrations are also empowered to grant or deny these events. Too often they modify the location, time and type of event, or prohibit the event altogether.

This restrictive policy leads citizens to organize peaceful assemblies without permission of the local authorities. The participants of the unauthorised actions are then arrested and prosecuted under administrative, and, in some cases, criminal legislation. Human Rights Center "Viasna" registered numerous cases of administrative prosecution under Article 167.1 of the Code of Administrative Infringements for holding an "unauthorised assembly" in a private apartment.

Restrictions of the right to freedom of speech

The Belorussian authorities use several means to restrict freedom of speech, such as liquidations of mass media and

[23] Disappeared persons in Belarus, Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, February 2004 http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc04/EDOC10062.htm

[24] See. Steadfast in Protest, Annual Report 2006, Observatory for the Protection of Human Rights Defenders FIDH/OMCT

suspension of their activity, detentions of journalists and criminal prosecutions for publications in mass media, official warnings related to professional activity, denials of the right to information, obstacles in the production and distribution of mass media, groundless legal prosecutions, restrictive use of accreditation and non-admission of foreign journalists to the country.

The independent press is under strong economic, administrative, and political pressure. Many newspapers cease to exist because of the impossibility to being distributed freely. Newspapers *Narodnaya Volia*, *BDG, Delovaya Gazeta* and *Tovarishch* had to be printed abroad and the copies were many times blocked at the border. Hundreds of Belarus citizens are subject to administrative penalties for distributing newspapers.

The authorities also use visa restrictions to prevent circulation of information about public and political events in Belarus. Many foreign journalists were denied visas or sent back to the border in 2006. According to the Belarusian Association of Journalists, during the Presidential election of 2006, 41 journalists of national and foreign media were detained and many of them were sentenced to imprisonment.

Academic freedoms are absent in the Republic of Belarus: the state completely controls the work of the universities, appoints their rectors and determines the content of the educational programs which must include courses of the so-called “state ideology”. In 2004 the authorities closed the European Humanities University, which had to move abroad to continue its activities. In 2004 the International Humanities Institute and in 2003 – the National Humanities Lyceum were closed down as well.

Effective equality between the Belorussian and Russian languages does not exist in many spheres, although guaranteed by the Belorussian Constitution. Indeed, despite the fact that during the last census about 80 per cent of Belorussians claimed their mother tongue is Belorussian, the number of schools teaching in Belorussian language and the number of students who study in Belorussian is steadily decreasing.

The religious freedoms in Belarus are considerably restricted, religious activity without state registration of a religious organisation is prohibited. As a result, participants of unsanctioned liturgies are frequently arrested and foreign priests are deported. In addition, Belarus is the only European country which continues to apply the **death penalty,** which is all the more worrying considering that the judiciary lacks independence from the executive.

Cooperation with international mechanisms

The Republic of Belarus fails to cooperate with international mechanisms and does not submit regular state reports under the International Covenant on Civil and Political Rights. It ignores previous recommendations of the UN Committee on Human Rights. The Belorussian Government also refused any cooperation with the UN Human Rights Council Special Rapporteur on Belarus, in violation of its international obligations.

Thus, FIDH and HRC “Viasna” call on the Human Rights Council

- to prolong consideration of the human rights situation in the Belarus while maintaining the mandate of the Special rapporteur on Belarus.

- the Council's resolution should urge the Belarusian authorities :

- to launch a truly independent investigation into disappearances by the competent national authorities in order to establish the responsibility and to bring those responsible to justice;

- to bring into conformity national legislation with international and regional standards regarding freedom of association, expression, opinion and peaceful assembly;

- to apply fully the 1998 UN Declaration on Human Rights Defenders and thus grant human rights defenders unimpeded freedom to carry out their activities;

- to extend a standing invitation to the UN Special Rapporteur on Belarus and to the other UN independent human rights mechanisms;

- to abolish the death penalty.

2. Russia on adequate housing

Forced evictions of Roma

The International Federation for Human Rights (FIDH) expresses its deep concern at ongoing forced evictions of Roma in the Russian Federation.

Roma peoples living in the Russian Federation are victims of severe forms of racial discrimination[25], one the most striking form being forced evictions. This phenomenon is widespread and increasing throughout the country. FIDH welcomes the report of the Special Rapporteur on the Right to Adequate Housing and in particular the *Basic Principles and Guidelines on Development-based Evictions and Displacement.* Indeed, one of the cause of the forced evictions of Roma is land acquisition measures associated with urban renewal.

Roma in the Russian Federation have been forced to settle down in 1956. *Decree N°21/863-450* (5th October 1956) of the Presidium of the Supreme Soviet prohibited any "vagrancy" for the so-called Gypsies, the only accepted appellation in spite of their diversity, in order to engage them in labour and to assimilate them.

After the collapse of the Soviet Union, the Russian authorities handled the privatisation of land but refused to effectively legalise the housing of the forcibly settled Roma families. Taking advantage of the lack of secured land tenure, education and of the extreme poverty level of the Roma population, the Russian administration refuses to regularise their occupation of the land and most often sells it by auction to the highest bidder. Concerning the attractive land where Roma families settled, the municipal administrations frequently confuse the public interest with private ones. The Roma settlements (*tabor*) are usually situated not far from the cities (Moscow, Saint-Petersbourg, Klin, Ivanovo...) on territories that combine proximity with town and a good environment, or within cities (Ekaterinburg, Tyumen...) with a boosting economy and subject to development and infrastructure projects, in particular airport, shopping mall, housing speculation and renovation, and urban renewal.

The Roma are unable to react to the land acquisition measures or to the allocations of parcels in the general urban plannings (*GenPlan*) that are very often decided without their consultation. They are usually not considered when expressing territorial claims and powerless when confronted to legal griefs presented by the administration (lack of registration of their houses, unauthorized buildings, violation of construction norms and rules as protection against fire, water evacuation, waste disposal...). As a result, their only way out is through unofficial agreements that offer no guarantee of adequate compensation or relocation. They are then either cheated or victims of forced evictions when they refuse to leave voluntarily.

Most noticeably, forced evictions can even occur in situations of due occupation of their houses that is declared illegal by judgments denying Roma a fair trial and rendered for political or commercial motivations. As recalled by the Special Rapporteur, several human rights bodies have recognised that forced evictions constitute "*prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances. Forced evictions if to happen at all, should be carried out under exceptional circumstances and in full accordance with international human rights law*".

Forced eviction of Roma and demolition of their houses carried out by the authorities violate the right of everyone to an adequate housing guaranteed by the International Covenant on Economic, Social and Cultural Rights and the International the International Convention on the Elimination of All Forms of Racial Discrimination – ratified by the Russian Federation.

Domestic Legal framework
The right to housing is guaranteed by the Constitution of the Russian Federation. Pursuant to article 25 of the Constitution of the Russian Federation, the home is deemed inviolable : *(...) No one shall have the right to enter the home against the will of persons residing in it except in cases stipulated by the federal law or under an order of a court of law.* Article 40 further states that no one may be arbitrarily deprived of a home, and provides that "*low income citizens (...) who are in need of housing shall be housed free of charge of for affordable pay from government, municipal and other housing funds*".

Moreover, the Constitution specifies that "*commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.*" (Art. 15)

Concerning forced evictions in the specific case of the Roma population (which has not been documented for decades), acquisitive prescription pursuant to article 234 of the Civil Code of the Russian Federation seems to be the only available legal remedy to precarious Roma housing. It grants individuals legal ownership of property provided that they have been in possession of such property openly and uninterruptedly for fifteen years.

FIDH recalls that the procedural requirements provided for by international law (General Comment n° 7) in case of

[25] See FIDH report *The Roma of Russia : the subject of multiple forms of discriminations*, n°407/2, November 2004

eviction applies to all vulnerable persons irrespective of whether they hold title to home and property under domestic law.

Forced evictions
In most cases, forced evictions are accomplished after a court ruling authorizing the administration to demolish the houses considered as "unauthorised buildings". Such evictions are often carried with violence. In some cases, the judgments followed a campaign in the local media against the entire Roma population, presenting them as drug dealers and criminals.

In Kaliningrad, in the village of Dorozhnoe, the Roma families were evicted during June 2006 by special police forces (*OMON*), the bailiff service of the Government of the Russian Federation, and Gurievsk administration, violently evicting them before demolishing and burning their houses. Meanwhile, the Roma families were threatened with machine guns and subjected to racist remarks. They received neither adequate compensation nor adequate relocation alternative and the destruction of their homes has effectively rendered the residents homeless. They were then living in temporary, makeshift shelters that do not have any heat, gas, electricity or water and were exposed to sub-freezing temperatures during the winter endangering their right to health. The children are unable to go to school and, now that they have no official residence, they face difficulties obtaining medical care for chronic conditions or illnesses arising from the mental hardship and the harsh conditions they endure as a result of their forced evictions.

Regarding this case, the Roma families, which had previously been invited by the administration to regularise their property and even to collaborate in the development of a reconstruction plan for their community, were faced with cynicism when they questioned the local administration about rumours of possible evictions in their settlements. They finally received a copy of judicial decisions whose proceedings had never been properly notified declaring Roma families' occupation of their houses illegal. The decisions enabling the authorities to conduct the demolitions followed a marginalisation process initiated by the administration that among others depicted the Roma as drug dealers. For some of them, it was possible to file an appeal with the Regional Court which was nevertheless dismissed.

FIDH fears that similar cases of forced evictions will take place in other places of the Russian Federation, such as in Tula, in the village of Kosaya Gora, where one Roma resident receives copy of a collective judgement whose proceeding have never been properly notified and declaring occupation of at least 50 houses illegal.

In Arkhangelsk, the Roma residents have been cheated by the Mayor who had promised to clean the city of Gypsies in his political campaign. They received a very low compensation and a one-way train ticket to Moscow.

In Ivanovo or Tula (Leninskij Rajon), the Roma that were requested to leave the land they occupy and to destroy their houses have received an informal poor alternative of relocation, placing them in isolated camps outside populated areas ("in the woods"), without access to health care and other facilities. In Ivanovo, 6 parcels were proposed to settle 500 families with more than 200 children. There is no school facility around and only one bus a day serving the city, and no gas supply.

In Chudovo (Saint-Petersburg), the Roma residents were asked to tear down their houses and received already several warnings from the authorities concerning an imminent demolition. They were also intimidated by the *OMON* (special police forces).

FIDH calls on the Human Rights Council to urge the Russian authorities to:

- Immediately stop forced evictions of Roma;

- Ensure that the current legislation is brought in conformity with the right to housing as defined by the Committee on Economic, Social and Cultural Rights and in particular integrate Roma population in decision-making processes regarding development and infrastructure projects which affect their right to housing;

- Address a standing invitation to the UN Special Rapporteur on the Right to Housing, and the UN Special Rapporteur on Racial Discrimination;

- Incorporate the Basic Principles and Guidelines on Development-based Evictions and Displacement into national legislation and policy.