**CHRI 2008** 

# Easier Said than Done







working for the practical realisation of human rights in the countries of the Commonwealth

#### **Commonwealth Human Rights Initiative**

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network.<sup>\*</sup> These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policymakers, highlight issues and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

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\* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association.

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#### CHRI Headquarters, New Delhi

B-117, Second Floor Sarvodaya Enclave New Delhi - 110 017 INDIA Tel: +91-11-2685-0523, 2652-8152, 2686-4678 Fax: +91-11-2686-4688 E-mail: info@humanrightsinitiative.org

#### CHRI United Kingdom, London

Institute of Commonwealth Studies 28, Russell Square London WC1B 5DS UK Tel: +44-020-7-862-8857 Fax: +44-020-7-862-8820 E-mail: chri@sas.ac.uk

www.humanrightsinitiative.org

#### CHRI Africa, Accra

House No.9, Samora Machel Street Asylum Down Opposite Beverly Hills Hotel Near Trust Towers, Accra, Ghana Tel: +00233-21-271170 Tel/Fax: +00233-21-271170 E-mail: chriafr@africaonline.com.gh

# Easier Said than Done

A report on commitments and performances of the Commonwealth members of the UN Human Rights Council

Writer: R. Iniyan Ilango

Editor: Lucy Mathieson Commonwealth Human Rights Initiative, 2008 The United Nations has recognized that development, security, peace and justice cannot be fully realized without human rights. Our welfare rests on each and all of these pillars. Each and all of these pillars are undermined when discrimination and inequality—both in blatant and in subtle ways—are allowed to fester and to poison harmonious coexistence.

- Ms. Navanethem Pillay, UN High Commissioner for Human Rights

Report Research and Writing Team (CHRI Interns): Zachary Abugov, Arnaud Chaltin, Elphie Galland, Gautum Kamath, Isobel Barrs, Tanvi Misra and Jan Stilke.

This report was conceptualised, designed and laid out by Chenthilkumar Paramasivam.

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#### Context

The United Nation Human Rights Council (UNHRC or the Council) is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006, with the main purpose of addressing situations of human rights violations and to make recommendations on them. One year after holding its first meeting, on 18 June 2007, UNHRC adopted its "Institution-building package" providing elements to guide it in its future work. Among the elements is the new Universal Periodic Review mechanism which assesses the human rights situations in all 192 UN Member States. Other features include a new Advisory Committee, which serves as UNHRC's "think tank" providing it with expertise and advice on thematic human rights issues and the revised Complaints Procedure mechanism, which allows individuals and organisations to bring complaints about human rights violations to the attention of the Council. The Council also continues to work closely with the UN Special Procedures established by the former Commission on Human Rights and assumed by the Council.

The 2007/08 edition of this Report represents research and analysis of the performance of those Commonwealth countries who are members of the Council.<sup>1</sup>

The year 2008 saw its proceedings begin in the new human rights mechanism, the Universal Periodic Review (UPR). During the year, 12 Commonwealth countries were reviewed under the UPR, including: South Africa, India, United Kingdom, Ghana, Pakistan, Zambia, Sri Lanka, Tonga, Botswana, Bahamas, Barbados, and Tuvalu. Also during the year, one Commonwealth country, Sri Lanka, was voted out of the UNHRC. However, the current year marks far more than the first sessions of the UPR Mechanism and Council elections. Beyond individual country performance at the Council, 2008 marks important anniversaries which represent international rallying points for the human rights community, as well as opportunities to collectively galvanise others into action – in particular, the 60th anniversaries of the Universal Declaration of Human Rights and of the Genocide Convention; and the twin 10th anniversaries of the 15th anniversary of the Vienna Conference.

The 60th anniversary of the Universal Declaration of Human Rights, which fell on 10 December 2008, offered a point for reflection on the progress made over the past six decades. However, at the same time, focus must remain on the challenges in bringing to reality the comprehensive vision of human rights set forth in the Universal Declaration. As stated by Ms. Navanethem Pillay, UN High Commissioner for Human Rights, at the opening of the 9th Session of the Council, "[t]his vision is a beacon of hope for the future—it contemplates a world with the full realization of civil, political, economic, social and cultural rights without distinction. This is a world in which every man, woman and child lives in dignity, free from hunger and protected from violence and discrimination, with the benefits of housing, health care, education and opportunity. This vision should be a unifying rather than divisive force, within and among all cultures."<sup>2</sup>

This body of law and the mechanisms that it fostered, such as treaty bodies and Special Procedures, have created a system for the promotion and protection of human rights worldwide. The challenge is how to make this system work better to overcome the persisting abuses, the omissions and the neglect that still stand in the way of the full implementation of human rights. - Ms. Navanethem Pillay, UN High Commissioner for Human Rights

With the Commonwealth having also formed a new grouping within the Council during the year, perhaps this represents a potential turning point, where the Commonwealth can demonstrate a new collectivity amongst regional voting blocs.

Whilst Commonwealth members have failed to act together in the foundational stages of the Council,<sup>3</sup> with the Commonwealth members of the Council being disunited in the degree of their commitment to the Commonwealth's founding principles and often acting in accordance with alliances based on real-politik moorings, the onset of UPR and the general anxiety of states of the new process, did provide some unity amongst Commonwealth governments – with certain countries, the United Kingdom, Pakistan and Bangladesh in particular, playing a role in assisting less well-resourced Commonwealth states prepare for the process. Furthermore, it represented a solid opportunity for Commonwealth civil society to engage in human rights advocacy efforts for their own countries and for other Commonwealth countries coming up for review.

Such collective Commonwealth government action within the UPR was, however, also negatively tainted. The Universal Periodic Review (UPR) is the mechanism established under General Assembly Resolution 60/251, which also created the UNHRC. Arguably, unlike its predecessor, the UNHRC's UPR mechanism was intended to undertake a review of countries based on objective and reliable information [and] of the fulfillment by each state of its human rights obligations and commitments in a manner, which ensures universality of coverage and equal treatment with respect to all states. In addition, the Resolution states that "the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies." Neverthless, with the first year of the UPR completed and the release of reviewed country's reports, mixed feelings remain around the process, its ability to be manipulated, whether it is an effective mechanism for assessing human rights situations and in which civil society can have valuable input. The process has been vulnerable to consummate manipulation, where "friendly states" have had the ability to collectively present, or represent, an image that is not reflective of the human rights context in the specific country under review. In this regard, many States have applied different standards of scrutiny to states with whom they have a regional or organisational allegiance.

Further concerns are raised by the performance of some countries on issues, such as a code of conduct to regulate the Council Special Procedures (Ghana, Malaysia); criteria for admissibility of complaints before being forwarded to states (India); the elimination of country-specific mandates (South Africa, India, Malaysia, Pakistan, Bangladesh); UPR Guidelines for collated information needing to meet "minimum evidentiary standards" (Sri Lanka on behalf of the Asian Group); the meaning and/or need to consult broadly under UPR Guidelines (Sri Lanka for the Asian Group, Nigeria, Bangladesh); criticism of the minority issues forum (India, Pakistan, Bangladesh); challenging the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (India, Malaysia), and at the 6<sup>th</sup> Session of the Council, on 17 September 2007, Canada voting against the adoption by the General Assembly of the UN declaration on the rights of indigenous peoples; and voting against a resolution calling for a moratorium on the death penalty (Nigeria). More positively, many Commonwealth member states spoke up and expressed commitments to key areas of concern. The United Kingdom, amongst other states, highlighted worrying trends, such as the adoption of restrictive legislation that limits the work of human rights defenders; the Canadian representatives expressed strong support for the work of the Special Representative on Human Rights Defenders. Pakistan (OIC) supported the establishment of a gender unit within OHCHR and encouraged the Secretariat to continue its efforts. And, perhaps as a good step forward for Commonwealth collective action at the Council, Pakistan and Bangladesh promised to help with the setting up of a voluntary trust fund to facilitate the participation of developing countries in the UPR process.

#### The Council Sessions: 2007 and 2008

During 2007 and 2008, the Council held six sessions and three special sessions:

**4th Session of the Human Rights Council: (12 to 30 March 2007)** Human Rights Council adopts seven resolutions and two decisions, including text on Darfur

**5th Session of the Human Rights Council: (11 to 18 June 2007)** Human Rights Council holds organizational meeting to discuss modalities of work

# 6th Session (first part and resumed) of the Human Rights Council: (10 to 28 September 2007, and 10-14 December 2007)

Creates New Expert Mechanism on Indigenous Peoples and Extends Mandates of Seven Special Procedures, Including on Sudan and Liberia

7th Session of the Human Rights Council (Geneva, 3 - 28 March 2008)

8th Session of the Human Rights Council (Geneva, 2 - 18 June 2008)

9th Session of the Human Rights Council (Geneva, Beginning on 8 September 2008)

#### Special Sessions

5th Special session of the Human Rights Council on the human rights situation in Myanmar, Geneva, 2 October 2007

6th Special Session of the Human Rights Council on human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent ones in occupied Gaza and the West Bank town of Nablus, Geneva, 23-24 January 2008

7th Special Session of the Human Rights Council on "The negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by the soaring food prices", Geneva, 22 May 2008

During its first year of existence, the Council held five sessions largely focused on institution building. The last two years represented the functioning of much of these processes. Their procedures were debated, utilised, amended, revised and voted upon. Aptly referred to as the initial "working years", the functioning of the Council has been watched closely by those member states, non-member states, and non-government organizations. Some anticipated flaws have developed, voting blocs have generally remained true to form, and, arguably, civil society's ability to engage in Council processes has been curtailed to compromising degrees that certainly raises questions on Commonwealth countries commitments to principles of partnership with civil society.

Foremost of importance in this effort, I believe, is impartiality in the operation of this system and adherence to the single and consistent standard represented by the Universal Declaration that is applied equally to all without political consideration. That may sound like a fantasy, but I think it is critical to overcoming the divisions that plague us in our efforts to promote human rights, particularly in the context of an intergovernmental organization. I start from the premise that the credibility of human rights work depends on its commitment to truth, with no tolerance for double standards or selective application.

- Ms. Navanethem Pillay, UN High Commissioner for Human Rights

Current trends in the Commonwealth around the UN Human Rights Council are more towards capacity building around the UPR. As regards international institutions the general trend in the Commonwealth are more focused on reforming international financial institutions and building cooperation on trade and economic development, with little focus on inter-governmental human rights dialogue. The newly launched Geneva Group of Commonwealth Countries is a definite step forward. However, there remains the danger that it may follow the general trend. Besides capacity building, Commonwealth focus on human rights is also grounded on the upholding of core human rights treaties and enabling treaty ratification. There is no effective move by the Commonwealth to take up a strong-footed international leadership on human rights. And, whilst the Commonwealth has done a pioneering job in capacity building and standard setting, there is an urgent need for it to extend this core work into meaningful global leadership on human rights. The prevailing situation of negative voting blocs and North-South friction at the Council provides a good opportunity for the Commonwealth to rise to the occasion and provide such leadership. In addition, given that the credibility of the Human Rights Council rests on its ability to meaningfully engage with civil society and produce a UPR process that improves the human rights situation on the ground, Commonwealth member countries could take the lead by drawing upon key principles related to civil society participation.<sup>4</sup>

# The Report

#### Structure of the Report

The report provides an analysis of the performance of the 13 Commonwealth member states over 2007 and 2008, at the:

- Council;
- UN level (outside the Council and in relation with UN human rights instruments); and
- domestic sphere.

The report compares the performances with the Council members' pre-election pledges and commitments. The report also examines Commonwealth behaviour as an intergovernmental body and a new grouping within the Council.

#### Methodology

The report has been written using research based on secondary sources. To the maximum extent possible, care has been taken to ensure that information on domestic human rights situations predominantly comes from local sources.

Two main challenges were faced to provide a balanced analysis. The first challenge was measuring the sometimes vague, generalised and un-quantifiable pledges made by many Commonwealth governments, in some instances, resulting in equally general compliance indicators. In other instances, the report was able to assess specific pledges in consequently specific terms. This pattern is an indicator of the existence of loopholes in the pledge-making process. It is also an indicator of the lack of efficient standards to govern this process. The second challenge was the difficulty in obtaining information on the countries on an equal scale. This has led to a variation in the quantity of information used in tallying compliance with pledges. The limited availability of reliable, objective and/or quantified information is in itself an indication of the lack of infrastructure in many Commonwealth states to monitor human rights situations. This has only heightened the necessity for an urgent need for both technical assistance and reinforced commitment to human rights on the part of Commonwealth governments. When using the report, it is advisable to take these factors into consideration and avoid comparing the different countries' situations and/or extent of the compliance with their pledges.

The report is also selective in its focus and considered a limited set of deliberations, resolutions and decisions, which were found particularly relevant for the assessment of the members' attitudes and performances. This report edition covers the period from June 2007 to June 2008.

#### **Endnotes**

- <sup>1</sup> Sri Lanka was a member of the UNHRC during much of the review period, until it was voted out.
- <sup>2</sup> Address by Ms. Navanethem Pillay UN High Commissioner for Human Rights on the occasion of the opening of the 9th Session of the Human Rights Council at http://www.unhchr.ch/huricane/huricane.nsf/view01/ 8F6C6D5B6EE3E7F6C12574BE004A5FB8?opendocument (last accessed on 18 December 2008).
- <sup>3</sup> CHRI "Easier Said Than Done" (2007 Edition) at http://www.humanrightsinitiative.org/publications/default.htm (last accessed on 18 December 2008) Easier Said than Done: A report on the commitments and performances of the Commonwealth members of the UN Human Rights Council (2007), Researched & Written by R. Iniyan Ilango; Edited by: Maja Daruwala, Caroline Sharp and Daniel Woods, CHRI.
- 4 Core Information 1 to 3:
- 1. THE COMMONWEALTH'S COMMITMENT TO CIVIL SOCIETY

Governments cannot develop nations by themselves. And the Commonwealth cannot make an impact unless the many organisations in our societies work together to improve the quality of life of citizens. The Commonwealth Secretariat welcomes, encourages and values participation in all its programme areas by effective civil society organisations with relevant expertise and experience. This can vary from participating in ministerial meetings or election monitoring, to contributing to activities on fair trade agreements or increasing women's representation in parliament.

2. How civil society organisations (CSOs) can get involved in the work of the commonwealth secretariat

Your government is the first port of call for information about the activities of the Commonwealth Secretariat in your country. There is a Commonwealth Contact Point for each country, usually in the Ministry of Planning. There is also a Commonwealth Contact Point in the relevant ministry of each of the key areas in which the Commonwealth Secretariat works. If you have difficulty identifying the Contact Point in your country or ministry, please contact the relevant division of the Commonwealth Secretariat for this Information.

The four year Strategic Plan and two year Operational Plans of the Commonwealth Secretariat are available at the bottom of the 'What We Do' section of the Secretariat's website. In addition, information is available from individual divisions. If you wish to be involved in an area of work identified by the Plans, contact your government or write or email the relevant division for further information setting out the areas in which your organisation works and how these relate to the programme in which you wish to be involved.

3. MINISTERIAL MEETINGS

The Commonwealth Secretariat organises ministerial level meetings of: education ministers, finance ministers, foreign ministers, health ministers, law ministers, tourism ministers, women's affairs ministers and youth ministers. Each meeting involves civil society in a different way. This can include any or all of: full consultation in the lead up to the meeting, receipt of papers, submission of CSO briefs and papers, participation as observers in plenary sessions and as full participants in working sessions and round tables. For detailed information and dates of ministerial meetings, check the events section of the website or contact the relevant division responsible for each meeting. Background papers and the agenda for many meetings are posted on the website four weeks before the meeting.

The Commonwealth Foundation often organises parallel activities and consultations for CSOs in the lead up to a ministerial meeting. At http://www.thecommonwealth.org/Templates/Internal.asp?NodelD=143213 [last accessed on 12 December 2008].

Refer to www.unhchr.ch/huricane/huricane.nsf/view01/335B04BC437FC02FC1257133002DC229?opendocument (last accessed on 12 December 2008).

# 1. Developments in the Past One Year

In the past, the Commonwealth has performed important roles in international human rights issues and institutions. Some of the most notable examples were the anti-apartheid efforts made by Commonwealth countries at the Commission on Human Rights and the General Assembly in the 1960s and 1970s, and its pioneering efforts in the area of debt relief.

However, in recent times Commonwealth initiatives at international human rights fora have been negligible. In this context in its inaugural report on the UN Human Rights Council last year ("Easier Said than Done: A Report on the Commitments and Performances of the Commonwealth Members of the UN Human Rights Council"), CHRI noted the fact that the Commonwealth currently plays a marginal role at the Council. In the same report, CHRI outlined key initiatives that the Commonwealth could undertake at the Council as two areas where the Commonwealth could play a role. CHRI suggested that the Commonwealth Secretariat, particularly the Human Rights Unit of the Secretariat, could be an important facilitator in such a role.

Commonwealth Heads of Government held their biannual meeting in November 2007, in Kampala, Uganda. Immediately prior to this meeting, CHRI convened the biannual "Commonwealth Human Rights Forum" in association with CPSU, ACAIS, HURINET and FHRI, and as a part of the Commonwealth Peoples Forum (CPF). CHRF is convened every two years with the intention of raising the profile of human rights at the Heads of Government meeting. A broad cross section of civil society, from across the Commonwealth, participates in this exercise. Amongst other things, the Concluding Statement of the CHRF called for Commonwealth members of the UN Human Rights Council to fully implement their pledges and commitments to the promotion and protection of human rights at the UN Human Rights Council, and make decisions consistent with human rights values. The statement also called for the Commonwealth to make the UPR a meaningful process that will ensure the participation of all stakeholders.

Subsequently, the Commonwealth Heads of Governments in their 2007 Communiqué stated that they recognised the facilitating role the Commonwealth Secretariat could play through the Human Rights Council in strengthening dialogue on, and raising awareness of, human rights in Commonwealth countries.

Prior to the Communiqué the only Commonwealth initiative on the Council was at the High Level Segment of the Fourth Session in March 2007. At the segment, the Commonwealth Secretary General spoke of the Commonwealth's resolve to work with the Council in any way possible. This practice, however, was not repeated at the 2008 High Level Segment. During March 2008, two consultations were organised on the Universal Periodic Review (UPR) in Geneva and London. The Geneva consultation was organised by the British and Ghanaian missions in Geneva; the consultation in London was organised by the Commonwealth Secretariat. Both consultations were focused on sharing experience and best practices related to the UPR within the Commonwealth.

Up to the beginning of the First Session of the UPR, states exhibited degrees of nervousness, much of which arose from the uncertainty around the functioning of the process and the many outstanding issues related to the working methods of the UPR Working Group. During March 2008, this led to a meeting in Geneva of Commonwealth countries in an attempt to alleviate concerns and find practicable solutions for those Commonwealth countries that may not have the resources or expertise to produce a government report for the review. At this meeting, the United Kingdom, a co-host, provided its experience of preparing for the review as an example of the processes of report writing and stakeholder consultations. CHRI was invited to present its experiences, as a stakeholder in the consultation process, and provided recommendations to Commonwealth governments to not see the finalisation of the government report for UPR as the end point in stakeholder consultation, but rather the beginning of an ongoing process including the implementation of recommendations from the review.

The London consultation was organised on 17 and 18 March 2008, by the Commonwealth Secretariat and attended by a number of Commonwealth country delegations in London, OHCHR and two civil society participants. The consultation discussed cooperation and sharing of experience on the UPR within the Commonwealth. Discussions included difficulties faced by Commonwealth governments and civil society in the UPR process and ways and means to overcome such difficulties. The London consultation followed a tripartite model in which governments and civil society members including national human rights institutions took part on the same platform to share and exchange views and experience. Following this on 2 May 2008, CHRI organised a consultation in London to explore ways in which the Commonwealth could act together at the UN Human Rights Council. The consultation was attended by civil society organisations and the Commonwealth Secretariat. It was felt that the Commonwealth, which has a large Southern membership and at the same time is spread across the North-South divide, could play a positive role if it were to wield a collective influence at the UN Human Rights Council based on Commonwealth human rights principles. It was further stressed that in human rights issues, where currently there is little common ground, Commonwealth civil societies have the potential to work together to create it. Civil society participants also emphasised that the Commonwealth needs to do more to build awareness around its human rights-related processes and mechanisms. On the whole, the consultation reiterated the view that the Commonwealth needs to be more active at the UN Human Rights Council.

Subsequently, on 19 May 2008, the Commonwealth Secretary General launched a group called the "Geneva Group of Commonwealth Countries". This group is envisaged to facilitate regular interventions between Geneva and Commonwealth institutions. The Group is comprised of Commonwealth Geneva Missions accredited to the UN and other institutions located in Geneva. The feasibility of establishing an office that would act as a base and forum for Commonwealth experts and intergovernmental meetings is currently being studied. The Group's aim is to focus on the variety of multilateral fora located in Geneva including the UN Human Rights Council. It has been reported that ambassadors and senior officials who were present at the launch ceremony of the Group supported its potential to look at cross cutting issues such as human rights.

Continuing its capacity-building efforts around the UPR, on 6 and 7 October 2008, the Commonwealth Secretariat organised a Caribbean Regional Seminar on the Universal Periodic Review in Barbados. The seminar focused on a sharing of experience and capacity building in the Commonwealth Caribbean region. On 22 and 23 November 2008, another seminar was organised in London for a larger pan-Commonwealth audience. The latter two maintained the tripartite nature of the first consultation in London.

#### 2. Trends

Current trends in the Commonwealth around the UN Human Rights Council, have been more towards capacity building around the UPR. As regards international institutions, the general trend in the Commonwealth has been more focused on reforming international financial institutions and building cooperation on trade and economic development, with little focus on inter governmental human rights dialogue. The newly launched Geneva Group of Commonwealth Countries is a definite forward step. However, there remains the danger that it may follow the general trend.

Besides capacity building, Commonwealth focus on human rights has also been grounded on the upholding of core human rights treaties and enabling treaty ratification. There has been no effective move by the Commonwealth to take up a strong-footed international leadership on human rights. For example, whilst the Commonwealth Ministerial Action Group (the premier Commonwealth body, composed of nine rotating members, responsible for scrutinising states that fail to live up to Commonwealth standards of governance and human rights) was quick to suspend Fiji following condemnations from other international bodies, Sri Lanka continues to be a sitting member of the Action Group, even after it was voted out of the UN Human Rights Council.

Furthermore, whilst the Commonwealth has performed an inspiring job in capacity building and standard setting, there is an urgent need for it to extend this core work into meaningful global leadership on human rights. The prevailing situation of negative voting blocs and North-South friction at the Council gives the commonwealth a good opportunity to provide such leadership. As noted earlier, the Commonwealth is well placed in terms of its membership and human rights standards to provide leadership. In addition, the contents of the CHOGM 2007 Communiqué would also appear to be favourable towards such a step.

## 3. Future Directions

The Commonwealth must create a dedicated policy to engage more meaningfully with the Council and should make all efforts to play a larger role. Currently, the Commonwealth has an observer status at the Council, but it has rarely operated this status. The designation of a Commonwealth point person to participate at the Council and represent the Commonwealth would be a good beginning. However, the Commonwealth will need to take key concrete initiatives based on its standards in order to initiate positive dialogue among its member countries at the Council. In the meantime, the current capacity-building work around the UPR should be maintained and expanded to become a forum that facilitates basic interaction and understanding on the UPR, between governments and civil society, including national human rights institutions. In this regard, it would appear prudent to strengthen the Human Rights Unit's role within the Secretariat and provide it with the necessary resources to take up such a role.

Against this setting, the following provides a review of Commonwealth country performance during the period June 2007 to June 2008 at the UNHRC.

# 1. Background

#### 1.1 Context

Bangladesh became independent from Pakistan as a sovereign state in 1971 and introduced a single party system in January 1975. In August 1975, the founder President of Bangladesh, Sheikh Mujibur Rahman, was killed in a coup along with most of his family members. This was then followed by several coups and counter coups. A multi-party system was reintroduced in 1978, by General Ziaur Rahman, a sector commander of the liberation war and an election was held in 1979. General Ziaur Rahman was killed in a failed coup in 1981; the Army Chief, General Hossain Muhammad Ershad, usurped power declaring Martial Law in March 1982. His tenure continued to the end of 1990, when he was overthrown by a mass uprising. The country eventually returned to democracy through the elections of February 1991. The political situation has, however, remained tumultuous as intense political rivalry and violence set the rhythm of the country's volatile political history. Power was handed over to a caretaker government, headed by the President, during October 2006, to hold parliamentary elections on 22 January 2007. Widespread violence and failure to reach a political understanding resulted in the 11 January 2007 takeover by the army and establishment of a military-backed caretaker government, headed by a former World Bank official, and postponement of the 22 January elections. The military-backed caretaker government declared that they would hold the parliamentary elections on 18 December 2008. The elections took place on 29 December 2008, and were reported by the Commonwealth Observer Group to have been conducted in a credible and transparent manner.

#### **1.2 UN Treaties**

Bangladesh is a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC) and its two Optional Protocols, the Convention on the Protection of the Rights of All Migrants Workers (CMW), and the Convention on the Rights of Persons with Disabilities.

Bangladesh has not signed the two Optional Protocols to CCPR, the Optional Protocols to CAT, the Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.

#### 1.3 UN reporting history

Bangladesh has completed some of its reporting obligations under international treaties, but has largely failed to satisfy most of these. There are currently nine reports overdue under four of the main international human rights instruments.

Bangladesh owes one report under ICCPR since 2001, and has not completed any rounds of reporting. It has failed to submit any reports under ICESCR and owes reports for 2000 and 2005. Under CERD, Bangladesh has completed each of the eleven required rounds of reporting, but has not yet submitted reports for 2002, 2004 and 2006. The country has completed its reporting requirements under CEDAW. Bangladesh has not completed any round of reporting under CAT, it has to submit three reports for 1999, 2003 and 2007.

Bangladesh has not extended an open invitation to the Special Procedures of the Council.

#### 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, on 14 June 2007, Bangladesh advocated for the ending of all country mandates.

It supported the implementation of the Universal Periodic Review and advocated for a code of conduct to regulate the Council Special Procedures, stating that it will be valuable to both mandate holders and countries. It also added that reference to state cooperation with special procedures should be completely removed from the code of conduct.

At the Sixth Session of the Council, Bangladesh suggested deletion of the word "broad" in the expression 'broad consultation process' for the UPR. It lent its support for the establishment of the UPR voluntary trust fund.

At this Session, Bangladesh continuously supported the lowest requirements for eligible candidates for mandate holders and for the members of the Advisory Committee.

At the same Session, on 25 September 2007, Bangladesh expressed its commitment to the implementation of the Durban Declaration and Programme of Action and affirmed the importance of its role in combating defamation and religious discrimination. Bangladesh expressed concern on the growing phenomenon of defamation of religions and the rise of racism, especially against Muslims.

Again, Bangladesh stated that the draft resolution's fate on the mandate of the Special Rapporteur on Indigenous People hinged on the future of the Working Group on Indigenous People of the Sub-Commission on the Promotion and Protection of Human Rights. It was of the opinion that it was not necessary to have three mechanisms (the Special Rapporteur, the Working Group, and the Permanent Forum) addressing indigenous people. Bangladesh further complained, on 12 December 2007, that the report on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People was drawn from NGO information and did not reflect the views of states. It recalled Article 6(b) of the code of conduct, and alleged that this report constituted a "clear disregard for the code".

On 20 September 2007, Bangladesh was critical of the idea of a minority issues forum, pointing out that the mandate of the Independent Expert had yet to be reviewed and it would be more appropriate to wait for the review to be completed.

On 26 September 2007, Bangladesh supported the renewal of the mandate on the right to food. Bangladesh stated that "civil and political rights are a luxury", when basic human rights such as the right to food are being violated.

On 10 December 2007, Bangladesh was of the view that significant consultations on important parts of the Optional Protocol to the ICESCR were still required. Moreover, it highlighted that a rectification of the legal status of the Committee on Economic, Social and Cultural Rights would prevent the erroneous assumption that this Committee has an inferior status to other committees. It added that the responsibility for the rectification was with the state parties to the Covenant. More specifically, this would require the calling of a conference of states party to the Covenant, according to the amendment procedure provided for by the Covenant itself.

On 14 December 2007, Bangladesh announced its abstention on the draft on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief proposed by the EU.

# 2. Pledge

#### 2.1 Context to Election to the Council

Bangladesh was one of the 18 Asian candidates who contested the May 2006 election to the Council. Thirteen seats were reserved for Asian states. While Bangladesh won the election, Thailand, Kyrgyzstan, Lebanon, Iran and Iraq lost. Bangladesh was third among the Asian group with 160 votes.

#### 2.2 Pledge Made

In its pre-election pledge document Bangladesh promised to establish a National Human Rights Commission "as soon as possible". Bangladesh pledged to continue to work towards further strengthening and consolidating institutional structures that promote good governance, democracy, human rights and the rule of law. Bangladesh pledged its commitment to further integrate the promotion and protection of human rights and fundamental freedoms into its national policies, including that on development and poverty eradication, with a special focus on the rights of women, children, minorities and persons with disabilities. In the document, Bangladesh stated that if elected it would separate the judiciary and the executive "as soon as feasible". It affirmed that it would "contemplate" adhering to the remaining international and regional human rights instruments. In addition, Bangladesh promised to cooperate with efforts undertaken in the Council, further highlighting its long involvement in the functioning of the Commission.

#### 3. Compliance

#### 3.1 Human Rights in the Past Year

President lajuddin Ahmed became the Caretaker Head in October 2006 and elections were scheduled to be held on 22 January 2007, which was postponed after the military-backed regime took over power and on 11 January 2007, kept lajuddin as the President while all the power rested with the Caretaker Chief Fakhruddin Ahmed. President lajuddin Ahmed declared a State of Emergency on 11 January 2007. Following this, the legality of the Declaration of Emergency, and the legitimacy of the government was in question. According to Article 141 (A1) of the Constitution, the Parliament should have been involved in the Declaration of Emergency.<sup>1</sup> The caretaker/interim government, which was meant to prepare for the upcoming general elections, was accused of appointing sympathisers in the election commission and other parts of civil administration, as well as the judiciary and was said to be backed by the military. The official reason for delaying elections was that it was necessary to eradicate corruption and the nexus between organised crime and politics before holding fresh election observers, declaring that the legitimacy of elections to be organised by the interim government was jeopardised due to instability in the country.<sup>2</sup>

Following the Emergency Power Rules (EPR), announced on 25 January 2007, the government faced the precarious balancing act of quelling violent political protests while safeguarding human rights. Certain freedoms, such as freedom of expression, assembly, association and media freedom were restricted,<sup>3</sup> whilst bans on political activity and meetings were subsequently eased.<sup>4</sup> The Emergency Rules proclaim that the enforcement of the catalogue of fundamental rights in Part Three of the Constitution will remain suspended.<sup>5</sup> The EPRs allow for preventive detention without arrest warrants, as well as the ability to deny release on bail of the accused during the enquiry, investigation and trial of the case. Offenders under the Emergency Rules may be convicted by a Speedy Trial Tribunal, which may hold its proceedings in secret.<sup>6</sup> Following the EPR, law enforcement agencies cannot be held accountable for "anything done in good faith". It is feared that this may be a step towards the institutionalisation of impunity.<sup>7</sup> The draconian measures contained in the Emergency Rules and the occurrence of rampant abuses without remedy by the government and the security forces<sup>8</sup> point to the conclusion that the required balance has yet to be achieved.

Despite having announced the restoration of democracy by the end of 2008, the government appears uncertain on when to withdraw the State of Emergency.<sup>9</sup> When it announced that local elections will be held on 4 August 2008, this move was met with criticism. Opposition parties cited the fact that elections under the Emergency cannot be free and fair, and stated that holding local elections before general elections is unconstitutional.<sup>10</sup> Media reports have indicated that the local elections were held on 4 August 2008 peacefully with a high voter turnout without incidents of violence or rigging.<sup>11</sup>

An unknown number, allegedly tens of thousands of people<sup>12</sup> (civil society estimates place it at 440,684),<sup>13</sup> have been temporarily detained under the Emergency Rules and a considerable number remain in detention. Arrests often occur in the early hours of the morning by plainclothes officers without arrest warrants pursuant to the EPRs, and detainees are often brought temporarily to unofficial detention centres such as army camps or military intelligence service (DGFI) sites,<sup>14</sup> which increases the chances of mistreatment in detention.<sup>15</sup>

A massive purported anti-corruption drive is in full swing, including the arrest of hundreds of politicians, amongst which are the leaders of the country's two main political parties and former prime ministers, Khaleda Zia (of the Bangladesh Nationalist Party) and Sheikh Hasina (of the Awami League).<sup>16</sup> The caretaker government has installed special Anti-Corruption Courts to process the large number of cases against high-profile political and economic personalities. The court procedures do not fulfil international standards on the due process of law and transparency.<sup>17</sup> Whilst the government has not published any details about the detentions, civil society groups estimated that over 900 persons, mostly politicians, were preventively detained under the Special Powers Act, 1974. At the time of writing this edition, the leaders of the two main parties and former Prime Ministers, Mrs. Khaleda Zia and Mrs. Shaikh Hasina, faced trial on corruption charges, as part of the interim government's "minus 2" policy of excluding the former dominant leaders from the political process. Both accuse the caretaker government of using the judiciary for political reasons in order to prevent them from running in the next general election. Interestingly, a recent report by an international civil society group claimed that corruption in Bangladesh increased in spite of the draconian clampdown, with over 97 per cent of respondents stating they had been victims of corruption within the first six months of Emergency Rule starting in January 2007. Alongside indicating failure of the interim government's pledge, it also lends credence to the widespread belief that detentions were politically motivated.<sup>18</sup>

The government has been accused of denying medical treatment to politicians arrested after the Declaration of Emergency. Ward Commissioner, Mohammed Quayyum Khan, of the Bangladesh National Party was arrested on 12 January 2007, allegedly without an arrest warrant and charged later under the Special Powers Act, 1974. On 9 January 2008, his detention was lifted, but he was reportedly rearrested on 10 January 2008, being charged again for prejudicial actions under the Special Powers Act and detained for 30 days.<sup>19</sup> He fainted in detention on 8 February 2008 and died soon after in hospital, allegedly due to the denial of medical care for his heart disease. Complaints about lack of medical treatment have also been raised by human rights advocates Sigma Huda, Sabera Aman, wife of a former state minister, and many others.<sup>20</sup>

On 8 March 2007, the caretaker government issued a complete ban on political activity, applied retrospectively from 11 January 2007. Offices of political parties were closed and political activists faced arrest when dealing with political issues. Despite lifting a ban on domestic politics on 10 September 2007, complaints continue that this has not been equally applied to all parties and not applied at all to actors outside the capital. It is alleged that political forces that collaborate with the current government are allowed more freedom than others. This is reportedly evident from the continuing arrests of prominent politicians, as well as district-level officials of political parties. On 4 June 2008, police arrested around 10,000 people, including local politicians as part of their policy to eradicate crime in the run up to the elections.<sup>21</sup> Intelligence services are apparently monitoring all political activity in the capital.<sup>22</sup>

Under the EPR, protests and demonstrations were banned, severely impairing the freedom of lawful assembly. On 20 August 2007, students ignored this ban and protests broke out in Dhaka, Chittagong and Kushtia. The students demanded the withdrawal of the military from campuses as well as the lifting of the State of Emergency. The protests, which saw soldiers in uniform being chased off the Dhaka university campus by angry students, spread to other parts of the capital and more universities, but were finally suppressed by the security forces. The government issued a five-day curfew all over the capital, shut down the Dhaka university campus and arbitrarily arrested faculty and students. A total of seven faculty members and 14 students were convicted for violating the EPRs and torching an intelligence vehicle on Rajshani university campus. All detained persons were either acquitted, or convicted but pardoned during January 2008.<sup>23</sup>

Similarly, garment workers who protested against the non-implementation of new working conditions and wage standards were arrested for violating the Emergency Power Rules. Following Cyclone Sidr, which hit Bangladesh during November 2007 and left 4000 Bangladeshis dead, victims who protested against mismanagement in the government's emergency relief were arrested and 12 were convicted for violating the State of Emergency.<sup>24</sup>

Among other violations perpetrated during the Emergency, torture was carried out by the security forces with impunity and remains a critical problem. Article 35 (5) of the Constitution of Bangladesh prohibits the use of torture. However, no specific law further defines torture. According to reports under the Emergency, torture remains endemic by state and non-state actors and it has been alleged that the interim government used torture in its anti-corruption drive.<sup>25</sup> The arrest of persons without warrants under the Special Powers Act, 1974 and the EPR, as well as detention and interrogation at unofficial places, such as DGFI sites, kept detainees beyond the scrutiny of courts and civil society and has led to mounting allegations of torture. According to reports, suspects are routinely detained by the security forces and tortured in custody, often in order to extract evidence against themselves or others.<sup>26</sup> Reports suggest that at least 44 persons were tortured by security forces during 2007.<sup>27</sup>

During March 2004, after a government move against pervasive crime in 2001, utilising police and military units, the Rapid Action Battalion (RAB) was established. Without clear lines of authority, with sweeping powers and enjoying wide immunity from prosecution, the RAB was reportedly involved in a large number of human rights violations in the reporting period. A report by Human Rights Watch implicates the RAB in at least 350 extrajudicial deaths in custody and the torture of hundreds more since its creation in April 2004.<sup>28</sup> According to a monitoring report by Odhikar, a human rights watchdog from Bangladesh, in the first 13 months of the Emergency, the RAB accounted for 91 of the 184 reported extrajudicial killings. These deaths are usually justified by RAB as committed in self-defence and described as deaths caused by "crossfire". It has also been reported that of the 184 extrajudicial killings, at least 29 were cases of persons tortured to death.<sup>29</sup>

Odhikar further reported that in 2007, 184 known cases of extrajudicial killings by law enforcement agencies occurred. While most of the killings are allegedly by the RAB, major law enforcement agencies have also been implicated. Of these 184 known cases, 130 persons were killed in so-called "crossfire" incidents, 30 persons tortured to death, the others killed due to other causes. Most cases remain to be investigated, with the notable exception of the death of Morshed Rana in a police station on 28 October 2007. Evidence suggests that he was tortured by the police before his death.<sup>30</sup> After Mr. Rana's family filed a case of "unnatural death", the Judicial Magistrate ordered that another police station investigate the case, and as a result temporarily suspended one constable and two senior inspectors. The investigation was then, however, handed over to the police station that the perpetrators were attached to, severely reducing the likelihood that it would be handled impartially.<sup>31</sup> During the first four months of 2008, 29 extrajudicial killings and 31 custodial deaths were recorded, with evidence of torture in most of the deaths.<sup>32</sup>

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated that the government should take immediate action to halt the RAB and other security services from using extrajudicial killings as a "policing technique".<sup>33</sup> The Special Rapporteur noted in its report that the RAB, police and auxiliary services regularly use a pattern of officially recording extrajudicial executions as "death in crossfire". Under its international obligations, as a state party to the International Covenant on Civil and Political Rights, pursuant to Article 4 (2), the Government of Bangladesh cannot derogate from the right to life. This is especially relevant in the form of extrajudicial killings, or death resulting from torture that has been occurring in the country.<sup>34</sup> During its term on the UN Human Rights Council, and despite a longstanding request, Bangladesh did not issue an invitation to the Special Rapporteur.<sup>35</sup>

Policing in Bangladesh remains unreformed and governed by antiquated laws. Frequently, the police force is used by the powers of the day as a means of suppressing opposition and dissent as exemplified by its failing performance when dealing with social or political unrest, terrorism, extortion or crime against

women.<sup>36</sup> The police service is characterised by poor working conditions and out-dated training, and its public reputation is tainted by corruption, abuse of power, impunity and external political interference. In its monitoring report on the first 13 months of the Emergency, Odhikar states that the police were responsible for about one-third of the 184 extrajudicial killings.<sup>37</sup>

In an incident in the Barisal district on 9 November 2007, a group of seven police officers stormed the house of Mr. Aminul Islam Shahin, beat him up and threatened to shoot him and fake his murder as a crossfire killing. After the intervention of neighbours, the police stopped the physical assault. They took Mr. Shahin to a hospital and forced the hospital staff to register it as a traffic accident. The victim was later transferred to the Bangladesh Rehabilitation Centre for Trauma Victims that provides medical treatment to torture victims.<sup>38</sup> Aided by the Bangladesh Institute of Human Rights, a case has been filed by the victim before the Chief Judicial Magistrate court in the Barishal district on 6 December 2007, which is currently pending. The intelligence service, DGFI, has a history of being used by various regimes to silence opposition and dissent and to serve the interest of the group in power. Under the Emergency Regulations, the service has been accused of being behind many operations against opposition party members, government critics and allegedly corrupt business persons. Reportedly, the DGFI also arbitrarily detains and assaults journalists, activists and academics.<sup>39</sup> More positively, a Police Reforms Programme was initiated in 2006, with the partnership of the UNDP, EU and the Department for International Development (DFID), with a budget of over US\$15 million. This programme has yielded promising results. A draft Bill replacing the colonial-era Police Act was completed in 2007, and was open to civil society inputs. After collecting data from citizens' surveys, the Bill is now with the Ministry of Home Affairs, which will incorporate the data collected into the Bill, and then ready it for ratification by the caretaker government.

Despite Bangladesh's population comprising approximately 45 indigenous communities, the Constitution of Bangladesh does not recognise their identity or rights.<sup>40</sup> The indigenous population of Bangladesh is distributed in the Chittagong Hill Tracks (CHT) and the lowland plains. In the lowlands they have been sidelined by Bengali settlers, while in the CHT, large areas of hilly and rather inaccessible land are designated as tribal areas.<sup>41</sup> Here, around 12 groups of tribals, collectively known as the Jummas, make up around 50 per cent of the population of the CHT. Indigenous peoples are often not involved in development projects, which are purportedly said to be established for their benefit.<sup>42</sup> The government is also accused of facilitating the settlement of Bengal is in the CHT, where a peace accord between a tribal militant group and the government has created limited stability. Evictions by security forces and land-grabs by Bengali settlers have created unrest, particularly among the indigenous hill peoples.

It is alleged that suppression, torture and religious persecution have increased in the CHT since the declaration of the State of Emergency. Over 50 Jummas have been arrested since the Emergency, often on false charges. Frequent charges of torture by the security forces have been reported in this context.<sup>43</sup>

On 20 April 2007, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent a petition to the government concerning of tribal activists in the CHT region. Reportedly, joint forces of police and the RAB are exploiting the weakened justice conditions in the tribal region under the Emergency to undertake suppressive actions against the political organisations of the tribal people. In one particular case, Mr. Bikram Marma was temporarily detained together with nearly a dozen other activists on and after 4 February 2007, allegedly for illegal possession of weapons and other arbitrary charges. During detention, many of the accused were constantly interrogated and deprived of sleep. The Special Representatives fear that these acts are meant to suppress the tribal activists' peaceful work and indigenous rights advocacy.<sup>44</sup>

On 10 February 2007, Joint Forces came to the Beribaid village searching for Mr. Choles Ritchil, a wellknown rights activist defending the rights of the indigenous Garo people of Modhupur. He was a leading figure in the protests against the construction of an eco-park in the Modhupur Forest, when construction was restarted following the Emergency. Unable to find him, the forces arrested five persons related to Mr. Ritchil's family, including two tenth-grade students. Reportedly, the detainees were beaten by the security forces and had to seek medical treatment. On 18 March 2007, Mr. Ritchil and three other persons travelling in the same minibus were arrested by members of the Joint Forces in plain clothes. The arrested were brought to an army camp near by and detained two to each room. Allegedly, Mr. Ritchil was tied to a window grid while being beaten up by nine persons who were ordered by an unidentified major to "size up Choles". After being inspected by a uniformed physician, he was taken to an unknown location. During this period, Mr. Ritchil was allegedly continuously tortured till he died. The other three detainees were also tortured, but released on the same day. The next day, Mr. Ritchil's body was handed over to his family and indigenous leaders. During the traditional bath before the burial, those attending, witnessed torture marks all over his body, including his eyes plucked out, his anus mutilated and his testicles removed. The Modhupur Police Station refused to register the case when it was presented by the family. After considerable pressure, the government installed a retired District Judge to carry out an investigation. In the course of this investigation four army personnel were charged, and measures such as removal from service and exclusion from promotion were contemplated.<sup>48</sup> However, it was recently reported that the four accused are yet to be punished.<sup>49</sup>

On 29 May 2007, Milton Chakma, Assistant Coordinator of the Hill Watch Human Rights Forum was arrested by army personnel. The court in Rangamati granted a limited period of police remand, but according to reports, he continued to be held at Rangamati jail, without being produced before the court.<sup>45</sup> On 3 June 2007, Santoshito Chakma, General Secretary of the Chittagong Hill Tracts Jumma Refugee Welfare Association, was reportedly arrested without warrant by the police, after coming back from a meeting on issues affecting returning Bangladeshi Jumma from India. Previously, he had organised protest actions to draw attention to the neglect of indigenous people by the Bangladesh government.<sup>46</sup>

On 13 August 2007, Bengali settlers reportedly tried to grab land from a Buddhist temple complex at Sadhana Tila in the CHT and repeatedly attacked the indigenous people and their settlements. It is suggested that the Bangladesh Army is involved in land expropriation of indigenous groups. In this specific case, the army is accused of offering a grant and a monthly allowance to settlers willing to settle in tribal lands and of threatening and intimidating indigenous leaders. On 15 August 2007, Sattyendriyo Chakma, indigenous headman, was allegedly threatened with death by Zone Commander Major Qamrul Hassan. And, on 3 September 2007, prospective settlers reportedly staged an attack on the indigenous people in Sadhana Tila. The army had to intervene to avoid bloodshed, after which an army officer apparently promised that there would be no further attacks by settlers.<sup>47</sup>

During the reporting period, individuals and NGOs working for the realisation and protection of human rights revealed threats and interference by security forces. On 3 May 2007, Mr. ASM Nasiruddin Elan, Acting director of Odhikar, was allegedly threatened at the Navy Headquarters in Banani, Dhaka. He was reportedly separated from an accompanying colleague and asked to meet Navy Captain Zubayer in order to discuss the custodial deaths of two people that were investigated by the organisation. Mr. Elan was threatened, and verbally abused, whilst demands were made to stop Odikhar's work on grounds that it and its members were involved in sedition and anti-state activities.<sup>50</sup> Odhikar's Kushtia representative, Mr. Hasan Ali, was taken to the Kushtia Sadar Police Station on 4 December 2007 and physically assaulted by the police. In a well reported case, Mr. Tasneem Khalil, journalist and human rights activist, was arrested on 11 May 2007, allegedly held in a DGFI detention centre and interrogated. He accused the security forces of having tortured him and forced him into making false confessions. Given his precarious situation, he had to flee Bangladesh with his family and seek asylum in Sweden.<sup>51</sup>

The EPR contains a number of regulations that directly or indirectly restrict media freedom and are in violation of the government's international obligation as state party to the International Covenant on Civil and Political Rights. News coverage that is considered to be "provocative" is banned. Specific sections of the EPR on this subject are loosely worded, leaving journalists and editors uncertain about what specifically would be punishable. The intelligence services, DGFI and the National Security Intelligence jointly run a media cell that frequently summons editors and journalists over "provocative and irresponsible" news and issues, news directives and editorial instructions to media outlets. Additionally, journalists face intimidation and physical violence and even torture by state agencies such as the army and DGFI.<sup>52</sup>

Violations of the Emergency Rules may be punished with five years in prison and substantial fines. The Rules empower the government to enforce pre-publication censorship and stop the distribution of any banned information.<sup>53</sup> Concerns have been expressed that such severe regulations have gone a long way towards encouraging self-censorship and hampering the culture of investigative journalism.

These wide powers have been applied in numerous cases. In August 2007, CBS News TV and Ekushey TV received warnings that their coverage of anti-government student protests in Dhaka was provocative. During the protests, TV stations were asked to refrain from airing talk shows, political programmes and provocative news reports. In September 2007, CBS News was temporarily shut down, allegedly due to registration issues, raising suspicion that the government might be using an administrative pretext to silence critical media. Reportedly, around 40 journalists were arrested in 2007.<sup>54</sup> Privately-owned newspapers faced around 100 defamation suits and were at pains to keep journalists and editors out of prison.<sup>55</sup> A number of journalists are still in detention, including Jahangir Alam Akash, correspondent for the Sangbad newspaper, for CBS News and the German Deutsche Welle. He was arrested under the Emergency Regulations on 23 October 2007, on extortion charges, and was apparently badly beaten and tortured while in custody. He was released on bail in late November 2007 after a month of detention. His case is being taken up by the special court system set up under the EPR, which restricts legal remedies, increases the maximum sentence and disallows bail on security grounds.<sup>56</sup> Following a ruling in January 2008, a High Court, allegedly instigated by local RAB agents, issued a new arrest warrant and nullified the bail granted. As of 7 January 2008, he was back in detention where he still languishes.

Violence against women continues at critical levels in Bangladesh. While relevant legislation is in place to prevent such violence, the issue has been neglected as the vast majority of victims tend to hail from poor, underprivileged backgrounds. Between January and April 2008, Odhikar recorded 60 killings related to dowry, 35 instances of "acid violence" and 147 cases of rape.<sup>57</sup> While it has been claimed that the Emergency is in place to increase security, violence against women continues unchecked. In 2007, Odhikar reported 459 cases of rape, of which 246 were committed against minors. Furthermore, 96 women were victims of acid attacks.<sup>58</sup> However, in a positive development, the government pushed forward a National Women's Development Policy in April 2008, which includes provision for the reservation of one-third of political parties' seats for women, as well as new laws and increased quotas to ensure equal opportunity and control for women over their earned property.<sup>59</sup>

#### 3.2 Compliance with the Pledge

In its pre-election pledge, highlighting its long involvement in the functioning of the erstwhile Commission on Human Rights, Bangladesh promised to cooperate with efforts undertaken in the Council. However, at the Fifth Session of the Council, Bangladesh advocated to end all country mandates and further sought to constrict the Council's Special Procedures within a code of conduct. Further, it argued for the deletion of that portion of the Code of Conduct that elaborates state cooperation with Special Procedures. In addition to this, at the Sixth Session, Bangladesh opposed the provision for broad consultation by governments on their reports to the Universal Periodic Review by asking for the deletion of the word "broad" from the relevant provision of the Council's draft resolution on institution building.

In its pre-election pledge Bangladesh stated that if elected it would separate the judiciary and the executive "as soon as feasible". This promise remains to be fulfilled. Bangladesh also promised to continue to work towards further strengthening and consolidating institutional structures that promote good governance, democracy, human rights and the rule of law. It also pledged its commitment to further integrate the promotion and protection of human rights and fundamental freedoms into its national policies, including special focus on the rights of women, children, minorities and persons with disabilities. Despite this, Bangladesh remains under Emergency Rule with little protection for fundamental freedoms. Under the Emergency, institutional structures remained undemocratic and the police and other security services were unreformed, amid serious allegations of arbitrary detention, torture and extrajudicial killings. Minorities and indigenous communities are marginalised and live in dire circumstances. Furthermore, despite positive

moves such as the National Women's Development Policy, violence against women continues to be rampant.

In its pledge, Bangladesh promised that it would "contemplate" adhering to the remaining international and regional human rights instruments. Despite this, Bangladesh is yet to become a party to the two Optional Protocols to the CCPR, the Optional Protocol to the CAT, the Convention for the Protection of All Persons from Enforced Disappearance, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

# 1. Background

#### 1.1 Context

In 1961, the British-administered Southern Cameroons merged with the Republic of Cameroon, which had won its independence from French administrators a year before. The first President of the Federal Republic of Cameroon, Ahmadou Ahidjo, ruled over it for over 20 years. During his repressive rule he converted the federal Cameroon into a unitary state by a national referendum, led it into single party rule in 1966 and re-christened it the United Republic of Cameroon in 1972. In 1982, Paul Biya, Ahidjo's Prime Minister, succeeded him as President and opened up the country to multiparty elections, which he won in 1992, 1997 and 2004. Commonwealth observers, whilst accepting the 2004 election results, stated that the electoral process lacked credibility in key areas. Divisions between the Anglophone north-west and south-west provinces and the remaining Francophone provinces began to surface strongly in the 1990s. Anglophones claim to be marginalised and have advocated various solutions ranging from federalism to secession.

#### **1.2 UN Treaties**

Cameroon is a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its first Optional Protocol, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC) and its two Optional Protocols. Cameroon also signed the Convention for the Protection of All Persons from Enforced Disappearance (CED).

Cameroon has not become a party to the Convention on the Protection of the Rights of All Migrant Workers (CMW), the Second Optional Protocol to ICCPR nor the Optional Protocol to CAT.

#### **1.3 UN Reporting History**

Cameroon has completed some of its reporting requirements due under the international treaties, but has largely failed to satisfy its requirements. The country has 10 reports due under six of the main international human rights instruments.

Cameroon has completed three rounds of reporting under CAT, but has failed to submit its 2004 report. Under ICCPR, the country has completed three rounds of reporting, but one report has been overdue since 2003. Cameroon has completed all its rounds of reporting under CEDAW, but owes the report for 2007. Under CERD, it has completed thirteen rounds of reporting, but still owes four reports for 2000, 2002, 2004 and 2006. It has also completed one round of reporting under obligations to ICESR. However, two reports have been overdue since 2001 and 2006. Under CRC, Cameroon has completed one round of reporting, but failed to submit the 2000 report.

Cameroon has not extended an open invitation to the UN Human Rights Council's Special Procedures.

#### 1.4 UN Voting Patterns and Performance at the Council

At the Sixth Session of the Council, on 14 December 2007, Cameroon announced its abstention on the draft on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief proposed by the EU.

#### 2. Pledge

#### 2.1 Context to Election to the Council

Cameroon was one of 13 African countries that contested the May 2006 elections for the 13 seats reserved for Africa. The election results were predetermined. Cameroon came tenth among the African group with 171 votes.

#### 2.2 Pledge Made

In its pre-election pledge, Cameroon stated that its laws provide that "Tout acte discriminatoire à l'égard des personnes ou de groupes ou d'organisation est réprimé". It also stated that press freedom has been guaranteed in Cameroon and that the protection of minorities and indigenous people has been granted. The country pledged to promote and respect human rights and liberties and promised to work towards the effectiveness of civil and political rights. Cameroon added that it would work towards the effectiveness of economic, social and cultural rights including the right to development. The country promised to cooperate with regional organisations, national human rights institutions and civil society organisations promoting human rights. It committed to promote the respect of human rights obligations enshrined in various international instruments.

Cameroon pledged to cooperate fully with the members of the Human Rights Council, and to work towards building the Council as a credible institution.

#### 3. Compliance

#### 3.1 Human Rights in the Past Year

Cameroon continues to face important challenges in human rights, including press repression and harassment of journalists, widespread corruption, violations of the rights of disadvantaged groups including women and indigenous peoples, police abuses, torture and custodial deaths, impunity, and the lack of accountability of government institutions aimed at reducing these violations.

The media continued to face threats, violence and arrest at the hands of Cameroon's security forces. In late July 2007, a journalist with the privately-owned daily Le Messager was reportedly beaten severely as he covered a peaceful protest by an opposition party against alleged fraud in the national elections, and had to be admitted to the emergency room.<sup>60</sup> A local news publisher, Wirkwa Eric Tayu, was sentenced to a year in prison in August 2007 for eight counts of press offences including criminal defamation. The conviction allegedly related to an April 2007 story in which he guoted a central government audit that showed corruption in his local government. "Authorities also accused Tayu of not depositing copies of the paper at the offices of the local prosecutor prior to sale and distribution, as stipulated under Cameroon's 1990 press law," which a spokesperson for the national press union says is a law used intermittently to censor content of which local authorities disapprove.<sup>61</sup> In February 2007, Cameroon's Communications Minister suspended a private Douala TV station for not purchasing an annual operating license. It is alleged that since the operating license was introduced in 2005, no media broadcasters had complied with all of the regime's requirements and that the station's suspension was a result of its vocal opposition to the proposed constitutional amendment which would end the limit of terms that the president can serve.<sup>62</sup> On the eve of the elections held on 22 July 2007, the Communications Ministry also reportedly banned a slot for opposition political parties dubbed the "political forum" on state television and radio, which has not yet been lifted.<sup>63</sup> In February 2008, three media outlets, Equinoxe TV, Radio Equinoxe and Magic FM, were reported to have been summarily shut down due to critical and wide coverage of the public demonstrations against the government that claimed to protest against mismanagement in the economy and rising fuel prices.<sup>64</sup> On 10 February 2008, Director, Jean Bosco Talle, and reporter, Herve Kemete, of the newspaper *Le Front* were reportedly detained by security forces whilst they were about to conduct an investigation on the wealth of top government officials. Kemete was released after a day of harassment. However, Talle was imprisoned for five days on charges of "spying" and "burglary".<sup>65</sup>

On 3 March 2008, a director of a local weekly, Jacques Blaise Mvié, was abducted by security forces and detained for two days in an unknown facility for his critical coverage of the armed forces' leadership.<sup>66</sup> On 4 July 2008, under international and domestic pressure, the Communications Minister announced a withdrawal on the ban on Magic FM and Equinoxe.<sup>67</sup>

Cameroon's legislative and council elections in July 2007 took place amid claims of vote rigging and fraud by the opposition and some foreign diplomats.<sup>68</sup> Over 100 petitions were filed to the Supreme Court disputing the results,<sup>69</sup> but the Court confirmed in early August that President Paul Biya's party had won a large majority.<sup>70</sup> It was feared that a large majority would allow President Biya to push a constitutional amendment through Parliament and end the limit on the number of terms a president can serve. The 1996 Constitution would have forced him to step down in 2011, at the end of his second seven-year term. In his New Year's address, President Biya announced that it was his intention to push for the end on such a limit, and that his party's two-third majority in Parliament would allow the amendment to pass. His announcement was heavily condemned by civil society, opposition groups and foreign diplomats, who saw it as another attempt by Biya to maintain his stranglehold on power, which has continued uninterrupted since 1982.<sup>71</sup> When asked in a meeting of the ruling party's senior officials, whether a referendum would be held on the issue, a senior party official allegedly said that the MPs, as representatives of the people, would decide for them in Parliament.<sup>72</sup> According to one civil society activist, on 7 January 2008, 93,000 Cameroonians had signed a petition against the proposed amendment.<sup>73</sup>

Between 25 and 29 February 2008, discontent with government policies turned into large-scale demonstrations and rioting that were violently suppressed. On 10 March 2008, official government figures released placed the number of resulting deaths at 40,<sup>74</sup> although this has been disputed by human rights groups, who claim that over 100 civilians lost their lives. Furthermore, it has been reported that about 1500 arrests were made of which 50 people were found guilty.<sup>75</sup> Despite widespread opposition to this bill, on 10 April 2008, the Cameroonian assembly voted overwhelmingly to pass the amendment (after opposition parties staged a walk-out). The amendment provided for immunity to the President from prosecution while in office (Article 53), as well as from retroactive action after the President's mandate ends (Article 53, para 2). Even more controversially, the amendment removes the two seven-year term limit to the office and enables President Biya to run for re-election for a third term in 2011.<sup>76</sup> On 13 May 2008, over two months after the riots, media reports indicated that some children arrested during the riots were still languishing in prisons, despite a 2007 amendment to the country's penal law that made detention of minors for misdemeanours illegal.<sup>77</sup>

Security forces continue to act against civilians with excessive violence. During October 2007, a taxi driver was reportedly stopped at a police checkpoint for not having the right papers. He was subsequently arrested and beaten unconscious, and lost an eye. When his colleagues went to retrieve him from police custody they were allegedly chased away with tear gas. A protest ensued in which the police shot into a crowd killing at least two taxi drivers. According to the report, anger among taxi drivers had been increasing over rampant roadside corruption perpetrated by police.<sup>78</sup> On 8 January 2008, three police officers were detained on suspicion of murdering a German Cameroonian citizen. A representative from the National Commission on Human Rights and Freedom expressed concern that the officers would get off without sanction despite being guilty, as, he alleged, had happened before. "What happens is that when these guys are sent to the Central Prison, at the time the attention of the population is diverted, they would be [...] granted bail, and the next thing you hear is that they have been transferred to work in other parts of the country."<sup>79</sup> In another case, on 7 June 2008, a farmer from Fam village in Nwa suffered severe head injuries after he was reportedly brutally beaten by the Divisional Officer and the Commissioner for Frontier Police for allegedly interfering on behalf of an old woman when the police officers were aggressively bargaining for the price of petrol.<sup>80</sup>

Overcrowding and lack of adequate facilities in prisons have led to many incidents of custodial deaths and excessive use of force by prison authorities. In a striking example, it was reported that police shot down at least 17 prisoners allegedly trying to escape from New Bell prison in Douala on 30 June 2008. Brutality by prison guards has been in evidence in the past, for example, in June 2007, where 17 prisoners of Yoko prison in Adamaoua province were shot down in similar fashion.<sup>81</sup>

On 13 November 2007, the UN Human Rights Committee decided on a complaint submitted under the Optional Protocol of the Covenant on Civil and Political Rights by a Cameroonian woman on behalf of her deceased husband, Mathew Titiahonjo, who died while in detention. Her husband was allegedly arrested. He was beaten whilst unlawfully held in custody. The police officer in charge reportedly told her that her husband was being held merely because he was a member of the Southern Cameroon National Council (SCNC), an Anglophone secessionist movement. He died from an unspecified illness while in detention after receiving no medical treatment. The Human Rights Committee found that a number of the deceased's rights under the covenant were infringed by the state party and that his wife therefore deserved a remedy from the state.<sup>82</sup>

In a similar case, a well-known journalist, Philip Afuson Njaru, was severely beaten and tortured by security personnel after he published an article critical of police corruption and of a constable raping a pregnant Nigerian woman in 1997 in Ekondo-Titi. The victim approached the Human Rights Committee after repeated harassment following this incident. During May 2007, the Committee ruled that the state should provide protection and give full compensation for his injuries.<sup>83</sup> However, the Cameroonian government has not yet taken any action, and harassment of the journalist from police and security forces has continued. In June 2008, after repeated complaints by the Human Rights Committee to the government, it was reported that the government "snubbed" the Human Rights Committee's ruling and demanded that the UN pay compensation to the victim if they thought their mandate was applicable.<sup>84</sup>

Homosexuality continues to be criminalised and punishable by law with a prison sentence of up to five years. Arrests of suspected homosexuals are reported on an alarmingly regular basis. On 31 July 2007, six Nigerian nationals were detained arbitrarily and held in custody for over seven months for violating Section 347 of the Penal Code, which prohibits homosexuality.<sup>85</sup> On 16 January 2008, three Cameroonians were sentenced to six months of hard labour for being homosexual. Lazare Baeeg, Emmanuel Balep and Tony Dikongue were arrested in August 2007, and had already spent nearly six months in detention awaiting trial at a prison in Douala.<sup>86</sup> It has been reported that in the past two years, over 30 people have been arrested, and dozens of students, particularly young women, have been expelled from schools as a result of their perceived sexual orientation.<sup>87</sup>

The Southern Cameroon National Council (SCNC), an Anglophone secessionist movement, continues to allege repression at the hands of the Francophone majority government. On 20 January 2007, a number of SCNC activists were arrested at a press conference for allegedly taking part in secessionist activities. According to a letter sent by two members of the European Parliament, the High Court Justice presiding over the case, and the government of Paul Biya, the SCNC members were initially released, but were then detained for over 50 days before being granted bail. Some of those arrested have alleged that they were beaten by police whilst in custody.<sup>88</sup> Their hearings were due to be held in April, but the cases were adjourned no less than five times due to the absence of key prosecution witnesses and the judge himself.<sup>89</sup> Finally, in December 2007, the charges were thrown out as the judge decided that Southern Cameroon was a "historic reality" and that there was a lack of evidence that the actions of the accused infringed on the territorial integrity of Cameroon. Claims by civil society that the delays in the trial were intended to subvert the course of justice, have been reportedly met with no apology or explanation for constant adjournments in the case.<sup>90</sup> Other arrests of SCNC members were recorded in the media in August and October 2007, both in relation to the reportedly peaceful preparation and undertaking of the organisation's celebration of Southern Cameroon's Independence Day.<sup>91</sup> Such patterns of arrests have continued on a regular basis. On 9 February 2008, 19 SCNC activists and leaders were detained at a peaceful rally in Mankon. However, the aovernment granted these activists bail and they were released in five days, reportedly a rare development for activists who are used to prolonged detention periods by security forces.<sup>92</sup> Despite Cameroon's pledge that indigenous freedoms have been granted by its Constitution, the Mbororo indigenous group has suffered for over 20 years at the hands of a multi-millionaire businessman, Alhaji Baba Ahmadou Danpullo, who allegedly has connections to the ruling party. Baba built a ranch on Mbororo grazing land in the 1980s and has been reportedly acting as an oligarch in the region ever since. According to an anonymous organisation working in Cameroon, the Mbororo have been victims of the seizure of their grazing lands without due compensation, unjust arrest, torture, extortion and detention of Mbororo pastoralists, seizure of livestock and money, forced marriage to the multi-millionaire businessman and his family members, and the systematic destabilisation of their culture and traditional institutions. Most recently, following the death of one of the Mbororo leaders in June, Baba handpicked his successor, over the wishes of the local Mbororo community,<sup>93</sup> The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples confirmed this and reported on the abusive use of force by soldiers in auelling a protest by the Mbororo community in which many people were injured. Furthermore, a number of Mbororos fled to Yaounde to seek refuge outside the American Embassy.<sup>94</sup> The Cameroon government issued an order banning the appointment of Baba's candidate as successor, but he has allegedly used his connections in the local government to ignore it.<sup>95</sup> In another blatant violation of the freedom of association and indigenous rights, the Divisional Officer of Tubah recently banned the Mbororo Social and Cultural Development Association, (MBOSCUDA) and issued an order to cease all its activities. Established in 1992, with ECOSOC consultative status, MBOSCUDA has embarked on a host of socio-ecnomic activities designed to empower the marginalised Mbororos.<sup>96</sup>

#### 3.2 Compliance with the Pledge

In its pre-election pledge Cameroon stated that its laws provide for non-discrimination. Furthermore, it claimed that press freedom has been guaranteed in Cameroon and that the protection of minorities and indigenous people has been granted. However, there have been allegations of partial treatment to indigenous, linguistic and sexual minorities besides severe repression of media freedom.

The country pledged to promote and respect human rights and liberties and promised to work towards the effectiveness of civil and political rights. Despite this, the past year has seen a questionable altering of the country's Constitution; incidents of police abuse and violence; internationally adjudged cases of the denial of civil and political rights and ensuing non-cooperation on the part of the government.

While in its pledge Cameroon committed to promote the respect of human rights obligations enshrined in various international instruments it has not cooperated with the UN Human Rights Committee and has largely failed to report on core human rights treaties it is a party to.

Cameroon has performed quite poorly on its treaty reporting in the past. A workshop was held in October at the United Nations Centre for Human Rights and Democracy in Central Africa in Yaoundé on improving treaty-body reporting. A number of representatives from Central African states attended. It is hoped that the workshop will improve Cameroon's record of reporting to treaty bodies.<sup>97</sup>

Cameroon's National Human Rights Institution (NHRI), the National Commission on Human Rights and Freedoms (NCHRF) is under-funded for a country of Cameroon's size. According to the head of the NCHRF, Ghana, which has a comparable population, has an NHRI with 700 employees, while Cameroon's only has 35 employees including security guards and drivers. The UNDP has reportedly renewed its technical assistance programme for the Commission.<sup>98</sup>

Press freedom has been seriously endangered in Cameroon in the last year, especially with the government actively responding to criticism by shutting down dissident media outlets, and using harassment and intimidation to encourage journalists to practise self-censorship.

# 1. Background

#### 1.1 Context

Canada has a federal system of government. It has been active in its attempts to promote human rights and democracy. Domestically, the country has legislated progressive reforms to better accommodate its French-speaking minority, and internationally it is a major donor, financing a range of human rights activities. However, Canada is not without its internal human rights issues. Despite a recent history of relatively progressive legislation, the Canadian indigenous community remains disadvantaged. Issues relating to migration and asylum also persist. More recently, Canada has also been part of a group of countries using questionable methods in the conduct of the global "war on terror".

#### **1.2 UN Treaties**

Canada is a party to the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Optional Protocol to the Convention on the Rights of the Child (CRC), the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC), the Optional Protocol to the Convention and Child Pornography (CRC-OP-SC).

Canada is not a party to the Convention on the Protection of the Rights of All Migrants Workers (CMW), the Convention for the Protection of All Persons from Enforced Disappearance (CED) or the Optional Protocol to CAT.

#### 1.3 UN Reporting History

Besides CRC-OP-SC, under which one report is overdue since 2007, Canada has no reports overdue.

Canada has also extended an open invitation to the UN Human Rights Council's Special Procedures.

#### 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, on 11 June 2007, Canada suggested that the obligations of states to cooperate with Special Procedures must be addressed in the Code of Conduct for special procedures' mandate holders. Canada appears to not want allegations presented to the special procedures to be subject to criteria of admissibility for their letters of allegations. Criteria for admissibility was acceptable for gross human rights violations, but not for individual complainants. On 14 June 2007, Canada agreed with Pakistan that the national report should be the basis of the UPR. Canada voiced that the credibility of the process rests on the country under review having no veto on the outcome of the UPR. It suggested adding a provision to safeguard the mandate holders' freedom of movement, to make sure that the security arrangements did not infringe on the ability of special procedures mandate holder to effectively carry out their work. At the Sixth Session of the Council, on 19 September 2007, Canada advocated for high requirements of the potential mandate holders in the non-paper.

At the Sixth Session of the Council, on 17 September 2007, Canada voted against the adoption by the General Assembly of the UN Declaration on the Rights of Indigenous Peoples on 13 September 2007. On 26 September 2007, Canada supported the continuation of the mandate of the Special Rapporteur

on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Several states, with the exclusion of Canada, firmly supported the Declaration, and agreed that the future mandate of the Special Rapporteur should focus on its implementation. Canada explained that since it had voted against the Declaration in the General Assembly, there was no need for the Special Rapporteur to implement it in Canada.

On 17 September 2007, it supported the Working Group on Arbitrary Detention's mandate. It supported the continuation of the mandate of the Special Rapporteur on Freedom of Religion or Belief. On 25 September 2007, Canada expressed its support for the renewal of the mandate of the Independent Expert on Haiti.

On 13 December 2007, Canada strongly supported the extension of the mandate of Representative of the Secretary-General on Internally Displaced Persons, the renewal of the mandate of Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental health, and the extension of the mandate of the Independent Expert on the Human Rights Situation in Liberia.

On 14 December 2007, Canada reiterated the importance of extending the mandate of the Special Rapporteur on the Situation of Human Rights in the Sudan.

At the Sixth Session of the Council, on 20 September 2007, Canada supported the draft resolution on the minority issues forum. The forum would complement the work of the Independent Expert on Minority Issues and serve to institutionalise the participation of NGOs, including those without ECOSOC consultative status. The forum would not adopt binding decisions, but aim at mainstreaming minority issues in the work of the Council.

On 28 September 2007, while the Resolution on the Human Rights Situation in Palestine and Other Occupied Arab Territories was adopted without a vote, Canada took the floor in a general comment after the vote to dissociate itself from the consensus. It stated that it would have supported the resolution if the text had been more even-handed, but that as drafted it did not accurately reflect the situation on the ground. Canada also took the floor to state its opposition to the draft Resolution on Religious and Cultural Rights in the Occupied Palestinian Territory, including East Jerusalem, and voted against the Resolution.

On 28 September 2007, Canada called for a vote on the draft Resolution on Human Rights and Unilateral Coercive Measures submitted by Cuba on behalf of the Non-Aligned Movement. Canada explained that the text failed to distinguish between acceptable measures, such as economic embargoes, and unacceptable unilateral coercive measures, and voted against the resolution.

On 28 September 2007, Canada voted against the Resolution on Elaboration of International Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination; it also voted against a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance. Canada voted against the declaration on Preparations for the Durban Review Conference. On 14 December 2007, Canada voted in favour of the draft on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

### 2. Pledge

#### 2.1 Context to Election to the Council

Canada was one of nine contestants for the seven seats reserved for the Western European and Other States Group. Canada won the election with 130 votes, the lowest score in this group. Portugal and Greece were both unsuccessful in securing a seat.

#### 2.2 Pledge Made

In its pre-election pledge Canada stated that promotion and protection of human rights is part of its domestic and foreign policies. It stressed that it had played a leadership role in the implementation of key human rights norms in areas that concern indigenous people, violence against women and mass exodus of refugees and migrants. Canada added, that by May 2006, it would have no reports due before the relevant treaty bodies and that it would submit its future reports in time. Canada also pledged to "consider" signing or ratifying the Optional Protocol to CAT and "other human rights instruments". Canada committed itself to implement human rights in the domestic sphere including on issues concerning indigenous people and racism. Finally, Canada further stated that gender equality is being promoted and protected in Canada through the Canadian Charter of Rights and Freedoms.

#### 3. Compliance

#### 3.1 Human Rights in the Past Year

Canada, traditionally thought of as a world leader in the promotion and protection of human rights, has been slowly ceding its reputation as a bastion of best practices. In October, United Nations High Commissioner for Human Rights, Louise Arbour, called into question the government's commitment to human rights. She said that Canada's reputation as a consensus builder was being undermined by a closer relationship with the United States on issues of security, the environment and foreign aid.<sup>99</sup>

Canadian participation on the "War on Terror" continues to weaken its position as a nation committed to human rights. Omar Khadr, a Canadian citizen, remains imprisoned in Guantanamo Bay and continues to be treated as an adult despite the fact that he was 15 years old when he was captured in Afghanistan during 2002. Canada is now the only country in the Western Europe and Other States Group (a UN voting bloc) that has not condemned the Military Tribunal in Cuba and actively lobbied and achieved release for their nationals from Guantanamo after Australian citizen, David Hicks, was repatriated earlier this year.<sup>100</sup> This is surprising given the fact that Canada was the first country to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000, and was the a major factor in the negotiations of the treaty.<sup>101</sup> An access to information request made by journalists that was granted in August was revealing in the government's position in the case. Contrary to public claims of then Minister of Foreign Affairs, Peter McKay, that Mr. Khadr was being treated humanely, the report stated that "allegations that Khadr suffered abuse were "consistent with reports from other released detainees and the report by the UN Committee against Torture". A document intended to serve as a briefing for Mr. Mackay suggested that he advise the media that deference to the US Military Court system was the policy being pursued by the Canadian government,<sup>102</sup> despite opposition from politicians and activists on both sides of the border. In January 2008, a Department of Foreign Affairs training manual was "inadvertently" released to lawyers working on a case challenging the government's policy of transferring Afghan detainees from Canadian forces to Afghan authorities. The manual had been used since 2004, to train consular officials on how to detect signs of abuse in Canadians detained abroad. Under the heading, "Possible Torture/Abuse Cases", the manual lists Afghanistan, China, Egypt, Guantanamo Bay, Iran, Israel, Mexico, Saudi Arabia, Syria and the United States of America, as potential countries that have engaged in torture.<sup>103</sup> The then Minister of Foreign Affairs, Maxime Bernier, later called the manual an "embarrassment", ordering it rewritten and assured the United States and Israel that it did not reflect the government's position. On 23 May 2008, the Supreme Court of Canada ruled that interrogation during Mr. Khadr's detention was clearly in contravention with the Canadian Charter of Rights and Freedoms (Section 7), and also ruled that a few of the documents related to his interrogation needed to be released to his defence attorneys.<sup>104</sup>

Canada's policy of transferring detainees from its armed forces in Afghanistan to Afghan security services has come under increased scrutiny in the past year. In November 2007, the Canadian Federal Court denied a bid by the Canadian government to dismiss a case brought by two human rights groups to

challenge the constitutionality of the Canada-Afghanistan Detainee Agreement. The groups alleged that, despite the existence of a Memorandum of Understanding (MoU) assuring that transferred detainees will be well-treated and monitoring visits of detention facilities by Canadian Forces, Canada cannot assure that detainees handed over to local forces will not be tortured.<sup>105</sup> In November, Canadian diplomats found evidence that at least one detainee had been abused after being transferred, confirming newspaper investigations where it had been alleged that torture was taking place.<sup>106</sup> After discovering a clear case of torture, the military suspended detainee transfer, but the government kept the decision secret till January, when it was revealed during the Federal Court case challenging the transfer agreement. On 1 March 2008, just as human rights groups feared, it was reported that the Military decided to resume transfers of detainees, just four months after the suspension took place due to clear evidence of torture.<sup>107</sup>

Prior to March 2007, Canada had a system in place allowing the government to issue security certificates that enabled authorities to arrest and deport foreigners and permanent residents named in the certificate. A Supreme Court Decision in March 2007, found that the system was in violation of due process and the principles of natural justice and forced the Canadian government to allow that policy to expire. A new law, which came into force in February 2008, is viewed by human rights groups and a British expert on the issue as a "missed opportunity" and not in keeping with the principle of due process held within the Canadian Charter of Rights and Freedoms and International law.<sup>108</sup> Human rights groups have criticised the government for not consulting a large cross section of the population in the drafting of the bill.<sup>109</sup> Although the new law is an improvement over the previous measures, as it gives the person subject to removal a measure of representation by a special advocate, it is feared that the new law could be subject to another constitutional challenge because it categorically denies the right to a fair trial.<sup>110</sup>

Canada was criticised in November 2007, by the UN Committee Against Torture (CAT), for its deportation of Bachan Singh Sogi to India where he was allegedly beaten whilst in detention. The committee also demanded that Canadian law be amended to comply with Article 3 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment, to prevent it from deporting individuals to countries where they face a serious risk of torture.<sup>111</sup>

Human rights groups have noted, whilst praising the decision to compensate and apologise to Maher Arar, a Canadian citizen who was subject to extraordinary rendition based on false evidence provided by Canadian authorities to the United States, concerns that most of the systemic recommendations (policy report) from the Arar Commission have yet to be implemented, including review mechanisms for Canadian security agencies.<sup>112</sup>

Canada's Safe Third Country Agreement with the US continues to garner criticism for turning away refugee claimants who pass through the United States on their way into Canada. Human rights groups have expressed concern that this makes Canada complicit in any abuse of refugees that takes place in the US, including their deportation back to their own country where they face a risk of being tortured or otherwise abused. During October, the UN High Commissioner for Refugees expressed concern that Canada was turning back asylum seekers at its borders without so much as an interview.<sup>113</sup> He was reacting to a case in which five asylum seekers were turned back without interview after applying for refugee status at Canada's southern border. On 29 November 2007, a Federal Court Judge ruled that the Safe Third Country Agreement was unconstitutional because the United States of America's laws and processes did not meet the conditions of international refugee conventions or the Convention against Torture.<sup>114</sup> On 17 January 2008, the Court issued a final order nullifying the agreement as of 1 February 2008.<sup>115</sup> However, despite pleas by refugee rights organisations, the government has appealed the decision and the Agreement remains in place while the appeal is being reviewed.<sup>116</sup>

Canada's Public Safety Minister, Stockwell Day, was quoted in late September as saying: "People cannot come into this country without proper documentation and consequences will follow if they do,"<sup>117</sup> suggesting that Canada is becoming increasingly resistant to harbouring refugees, who often flee without being able to collect proper documents. On 28 September 2007, an American refugee aid worker was arrested at the Canadian border for aiding some Haitian refugees claim refugee status at a Canada-US border

station in Quebec. She was the first aid worker to be arrested under a 2002 immigration law, which was intended to target human traffickers.<sup>118</sup> Former cabinet members, including some former Conservative Members of Parliament, church groups and the Canadian Bar Association have accused the Conservative government of rescinding on its 2002 promise not to use the law against those doing humanitarian work.<sup>119</sup> On 9 November 2007, after intense pressure, the charges against the aid worker were dropped.<sup>120</sup>

Canada has a strong record of opposition to the death penalty at home and abroad. However, in November 2007, Prime Minister Stephen Harper announced that Canada would no longer seek clemency for Canadian citizens on death row abroad as long as they were convicted after a fair trial in a democratic country. His announcement came in relation to his government's decision not to seek clemency for Canadian, Ronald Smith, who is on death row in the United States for a murder he committed in 1982. Prime Minister Harper was quoted as saying, "The reality of this particular case is that were we to intervene it would very quickly become a question of whether we are prepared to repatriate a double-murderer to Canada. In light of this government's strong initiatives on tackling violent crime I think that would send the wrong signal to the Canadian population."<sup>121</sup> The decision has been condemned by all three opposition parties and human rights groups. Canada's decision not to co-sponsor the recent UN resolution<sup>122</sup> on the abolishment of the death penalty was also noted by human rights groups as being inconsistent with Canada's past commitment to oppose capital punishment.<sup>123</sup>

Indigenous people continue to exist as Canada's most marginalized population. However, in a positive development the government introduced a new bill intended to reduce the time it takes to process land claims made by indigenous groups from the current average of 13 years to three years. As of June 2007, there was a backlog of 800 claims waiting to be processed. The bill was applauded by indigenous groups and was passed on 18 June 2008.<sup>124</sup> A week before this bill was formally passed, the Prime Minister also apologised to the First Nations (an umbrella organisation representing indigenous people) for the atrocities committed in the past, and the disadvantaged state of the current indigenous population.<sup>125</sup> While this apology was historic in nature, it remains to be seen how far the government will go to translate the spirit of the apology into reality.

In his preliminary report regarding a trip to Canada, the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, found that Aboriginal women were more likely to be affected by homelessness and inadequate housing.<sup>126</sup> The Special Rapporteur also found that the lack of protection law for women living on reserves and their lack of access to the Canadian Human Rights Commission were the greatest barriers to accessing adequate housing and a life free from spousal abuse. Furthermore, he found that some Aboriginal communities had no access to potable water or proper sanitation.<sup>127</sup> Human rights groups have<sup>128</sup> documented two ongoing cases in which the government has granted licenses to corporations, which are extracting resources from land claimed by two indigenous groups, the Lubicon Cree from Alberta<sup>129</sup> and the Grassy Narrows in Ontari,<sup>130</sup> without consent or adequate remuneration. Also relevant are the findings of the Ipperwash inquiry and the recommendations made during this inquiry, which highlight cultural and racial discrimination inherent within the provincial government and the police force.<sup>131</sup> Recently, human rights groups have alleged that despite holding the government and the former Ontario Premier, Mike Harris, responsible, most of the important recommendations, especially those of indigenous land rights and resource use, have not been implemented.<sup>132</sup>

On 22 August 2007, it was reported that Canada was one of seven countries that blocked the creation of a universal declaration of human rights for indigenous people. The charter has reportedly been under discussion for approximately 20 years and was approved in September 2007 by the UN General Assembly despite Canada's objections, with an overwhelming majority of 144 to 4 votes.<sup>133</sup> This was the first time Canada, alongside the United States, Australia and New Zealand, demanded that a UN General Assembly resolution should not apply to those states that have not signed it.

In the case of Canada, the issue of corporate social responsibility is very closely connected to indigenous land rights and resource use. On 6 June 2008, it was reported that one of the world's largest forestry

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companies, AbitibiBowater Inc., would withdraw operations from the Whiskey Jack forest, which is traditional Grassy Narrows territory in Ontario. However, corporate social responsibility goes much further than protecting indigenous rights. Many examples of Canadian businesses operating in conflict zones, or conducting practices that contribute to violations can be found. Three examples worth noting are: Talisman Energy Inc, one of the largest independent Canadian oil and gas companies operated in Darfur during the genocide; Ivanhoe Mines was allegedly complicit in violations by the Burmese military junta;<sup>134</sup> and mining companies such as Grayworks, Placer Dome (part of Barrick Gold) and TVI Pacific allegedly thrive by politically interfering in the Philippines. On a smaller scale, a company called Falkenham Backhoe Services tried in vain to appeal a decision in the Nova Scotia Court of Appeal to reduce the compensation to be paid to a black employee who alleged racial discrimination in the workplace. The Nova Scotia Court of Appeal dismissed the application to reduce the damages awarded to a black worker, who a human rights board of inquiry found had been the victim of discrimination on the job. The board of inquiry ordered the company to pay \$15,300 to Mr. Gough for 20 weeks of lost wages and \$8,000 for racial slurs he faced on the job. The company was also ordered to supply sensitivity training for all employees and to draw up a harassment policy for the commission to view.<sup>135</sup>

#### 3.2 Compliance with the Pledge

In its pre-election pledge Canada stated that promotion and protection of human rights is a part of its domestic and foreign policies. However, Canada's policy towards its citizens awaiting death penalty in foreign countries and being held in foreign detention centres such as Guntanamo Bay does not reflect this. Furthermore, its detainee transfer policy and the activities of Canadian multinational companies do not seem to be sufficiently in accordance with this pledge. Additionally, Canada's Safe Third Country Agreement with the US does not appear compatible with the pledge.

In its pledge, Canada also committed itself to implement human rights in the domestic sphere including issues concerning indigenous people and racism. Whilst complaints of racism still seem to surface, indigenous people continue to be in a dire state when compared with other groups. Though it is notable that several improvements have taken place in this area in the domestic sphere in the past year much more remains to be done. In this regard it is also to be noted that while Canada in its pledge stressed that it had played a leadership role in the implementation of key human rights norms in areas that concern indigenous people, violence against women and mass exodus of refugees and migrants, it chose to block international efforts at the General Assembly to protect indigenous people. Canada is also yet to become a party to the Convention on the Protection of the Rights of All Migrants Workers and has not extended adequate protection to refugees and migrants in the context of its Safe Third Country Agreement with the US and its security policy towards foreigners.

In its pledge Canada promised to "consider" signing or ratifying the Optional Protocol to CAT and "other human rights instruments". The consideration has not yet fructified in terms of the Optional Protocol to CAT, the Convention on the Protection of the Rights of All Migrants Workers and the Convention for the Protection of All Persons from Enforced Disappearance (CED).

# 1. Background

#### 1.1 Context

In 1957, Ghana became the first country to achieve independence from colonial rule in sub-Saharan Africa. In 1966, Ghana's first President was deposed in a coup heralding a 26-year period of military rule, coups and counter-coups. In 1992, Ghana adopted a new constitution, establishing multi-party democracy and placing Ghana on a more stable democratic footing. Between 1994 and 1995, land disputes caused ethnic violence in an otherwise peaceful country. Ghana continues to be one of the more successful models of African reform and promotes its pan-African ideals across the continent.

#### **1.2 UN Treaties**

Ghana is a party to the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC) and its two Optional Protocols and the Convention on the Protection of the Rights of All Migrant Workers (CMW). Ghana also signed the Optional Protocol to CAT, the Convention for the Protection of All Persons from Enforced Disappearance (CED), the Convention on the Rights of Persons with Disabilities (CPD) and its Optional Protocol.

Ghana is not a party to the Second Optional Protocol to ICCPR.

#### **1.3 UN Reporting History**

Ghana has completed some of its reporting requirements under international treaties, but has largely failed to satisfy its requirements.

Ghana has not completed any reporting under ICCPR (reports are outstanding for 2001 to 2006) or ICESR (an initial report was due in February 2001). Ghana has completed 17 rounds of reporting under the CERD, but has not yet submitted its report for 2006. The country has not completed any reporting round under CAT and still owes its 2001 and 2005 reports. Under CMW Ghana has not completed any reporting and one report is overdue since 2004. It has completed its reporting requirement under CRC and CEDAW.

Ghana has not yet extended an open invitation to the Human Rights Council Special Procedures.

#### 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of zthe Council, on 18 June 2007, Ghana advocated for a code of conduct to regulate the Council Special Procedures.

At the Sixth Session of the Council, on 26 September 2007, Ghana co-sponsored the draft resolution extending the mandate of the Independent Expert on the human rights situation in Burundi. On 13 December 2007, Ghana supported the extension of the mandate of the Independent Expert on the human rights situation in Liberia. On 14 December 2007, GHANA reiterated the importance of extending the mandate of the Special Rapporteur on the situation of human rights in the Sudan.

On 14 December 2007, Ghana voted in favour of the draft on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.
# 2. Pledge

### 2.1 Context to Election to the Council

Ghana was one of 13 African countries that contested the May 2006 elections to the Council. The number of candidates was the same as the number of seats for Africa. The election results were predetermined. Ghana came first among the African group with 183 votes. In its re-election bid in May 2008, Ghana was successful and came second in the African group with 181 votes.

# 2.2 Pledge Made

In its pre-election pledge in March 2008, Ghana committed to cooperate fully with UN treaty bodies and pledged to participate actively in the work of the UN Human Rights Council with a view to strengthen it. Ghana also promised to extend its standing invitation to the Council's Special Procedures and further committed to strengthen its policies for the advancement of women and to eliminate gender discrimination. Finally, it reiterated its commitment to the survival, development and protection of children in issues that affect child rights. Ghana also stressed on the availability of legal provisions to tackle traditional practices harmful to women such as female genital mutilation and emphasised the establishment of the Domestic Violence Victims Support Unit. Further, Ghana highlighted provisions of its 1992 Constitution, which guarantees fundamental rights and freedoms.

# 3. Compliance

### 3.1 Human Rights in the Past Year

The past year has seen many human rights issues within Ghana. Police reforms in Ghana are still scarce and there have been many complaints of police abuse. Violence against women, forced evictions, implementation gaps in both civil and political rights as well as economic social and cultural rights, civil society space and gap in access to justice are major areas of concern. According to official records of the Commission on Human Rights and Administrative Justice (CHRAJ), 818 cases of human rights abuses were reported, of which only 594 cases were settled.<sup>136</sup>

Police excess and abuses have been a major concern in Ghana in the past one year. On 1 June 2007, students from Takoradi Polytechnic, peacefully protesting the removal of their principal, were attacked by the police. It has been alleged that the police fired tear gas rounds and rubber bullets directly at protesting students, as well as physically abusing residents and students living in the neighbourhood with gun butts and batons. It has been reported that 69 people were arrested in total, including one injured student who was refused medical help, alongside all the others who were denied access to legal representation and not informed about the charges behind their detention.

The police have also been accused of failing to maintain their neutrality in chieftaincy disputes. It has been reported that on 1 November 2007, whilst attempting to control violence over disputed chieftaincy in Anloga, the police fired indiscriminately killing two civilians. During the incident it is indicated that one policeman was kidnapped and later killed. Reports state that the police took revenge by arresting and abusing the inhabitants of the village indiscriminately, injuring inter alia women and children. It was further reported that the police indiscriminately caused damage to property and arrested all male youth in sight. This, it has been indicated, led to the arrest of around 94 people causing severe congestion in detention facilities, eventually leading to the death of two people in custody. Police acts during this incident have been seen as being partial and in support of one of the disputing factions. In addition to abusive crowd control tactics, the police have been accused of several individual cases of abuses. On 17 August 2007, Richard Salu was allegedly arrested by a plain clothes policeman

criticising the government. According to reports he was not given any reason for the arrest and was assaulted and sexually abused by four male and one female police officers at Achimota Police Station. His release according to reports was obtained only through the intervention of higher authorities and reports indicate that he was not charged for any offence. In November 2007, two incidents of police brutality were reported in the local media.<sup>137</sup> In one instance a commercial driver, Ekow Ebenezer, was stripped and beaten after his vehicle was stopped. In the second incident, Elias Agbana, was detained by police at Kpedze, handcuffed and chained and displayed publicly. Similarly it was reported in June 2007, a mentally challenged individual was physically assaulted and arrested. Following brief detention in a cell and resulting abuse by cellmates, it is reported that he was chained to a pole outside the police station for 17 days.

Since 2006, it has been observed that forced evictions have become a significant human rights problem in Ghana. In the past one year, several incidents have been noted. On 10 April 2007, inhabitants of the Sodom and Gomorrah area in Kumasi were evicted without notice. The residents of the area, according to reports, had obtained a stay on the demolishing of the area from the Kumasi Metropolitan Assembly. It has been estimated that between 800-1000 people who had lived in the area for up to 10 years were displaced. Comparatively, forced evictions are on the rise. In 2006, CHRJ reported that a series of forced evictions, involving 7000 people took place in that year.<sup>138</sup> Whilst the government has ratified the ICESCR and has committed to the Habitat agenda, no independent commission of inquiry has yet been set up to investigate these forced evictions, especially the loss of life and human rights abuses on Dudzorme Island in 2006.

In Dambai, another such incident was reported to have taken place on 9 October 2007, despite a court injunction. Reports indicate that 200 people were left destitute and two dead. Local authorities are reported to have given no assistance to those affected in this case. In most cases it has been reported that evictees are not compensated and are left to live in a destitute condition. Calls for reform in this area have been met with the no response from government authorities.<sup>139</sup>

In Ghana, an estimated 300,000 people work on artisanal (small-scale) mining activities (galamsey), involving gold, diamond, sand and salt. Aside from health risks occurring from mining (especially the high risk of mercury poisoning),<sup>140</sup> the criminalisation of the trade has led to threats and harassment by the police and military. According to reports by the Wassa Association of Communities affected by Mining (WACAM), a high degree of complicity of multinational mining companies in human rights violations was in evidence. In many cases, it is private security personnel of mining companies that take the lead, and are assisted by armed police and soldiers who often conduct "operations" ostensibly to arrest alleged galamsey in the concessions of large-scale mining companies. Since November 2006, the military and police have been conducting a country-wide operation named "Operation Flush Out", during which hundreds of galamsey were forcefully removed from the land they were working on. Local and international groups reported that an unknown number of galamsey have been shot, beaten and maimed by members of the private and state security forces.<sup>141</sup>

Whilst access to justice is guaranteed by the Ghanaian Constitution, it is noticed that the geographical distribution of courts affect equitable access. According to sources the distribution of courts favour areas with a density of economic activity rather than areas with dense population. District courts are also known to suffer from shortage of magistrates. It was reported in 2007, that there were 113 District courts in Ghana, but the country only had 50 appointed magistrates to staff all of them. Long delays in trials and unaffordable costs to initiate litigation have also been identified as problems. The hourly rate for a senior counsel is US \$300 and for a junior counsel US \$150. Although legal aid has been guaranteed in the Ghanaian Constitution, it has been felt that the inadequacy of lawyers available for pro bono litigation has constrained such aid. Corruption amongst policemen and court officials has also been considered as impediments in access to justice in Ghana.

The right to information is guaranteed by the Ghanaian Constitution. However, it is yet to be implemented. A Right to Information Bill was drafted by the Attorney General's Department in 2002, but it is yet to be passed.

Civil society space in Ghana has been relatively favourable and civil society has been able to operate freely in human rights fields. However, it has recently been feared that the Draft Trust, 2006 and accompanying 2007 Guidelines, if passed in Parliament, may potentially threaten the independence of civil society in Ghana. The Bill allegedly places civil society organisations in the same category as trusts and thus attempts to bring them under government control. Concerns have also been raised by the excessive powers the Bill gives to the Ministry of Manpower Development and Employment, including the power to approve civil society projects.

Violence against women has been an area of concern in Ghana in the past year. Dehumanising practices are forbidden by the Constitution. Nevertheless, practices such as Female Genital Mutiliation (FGM) and Trokosi (a cultural practice involving the sexual enslavement of young girls) are still known to be practiced. According to a recent report by the Special Rapporteur for violence against women, there are at least 23 shrines in the Volta region, and three in the Greater Accra region that still practice Trokosi.<sup>142</sup> Furthermore, even though FGM was criminalised in 1994, and the penalties increased, UNICEF reported that during 2005, 5.4 per cent of all women in Ghana, aged 15 to 49 years of age, have been subject to FGM.<sup>143</sup>

In this regard, although the Domestic Violence Act does provides a right to free medical relief to victims of such cultural practices, no measures have yet been put in place to facilitate this right. In addition, due to fear of societal backlash, traditional cultural practices are not reported to the authorities, and when they are, authorities are reluctant to enforce the law. According to the Special Rapporteur, while many authorities such as the CHRAJ and Ministry for Children's and Women's Affairs have publicly condemned the practice of ritual servitude, elected politicians often do not take a stand in public, fearing alienation of key constituencies.<sup>144</sup> Access to justice in cases involving gender-based violence, are also cited as a problem in Ghana. It has been reported that in many cases involving sexual violence, victims are unable to go ahead with litigation as they cannot afford the fee for a medical report. Another major problem has been the lack of resources and capacity of the police designed to deal with gender-based and domestic violence. It is reported that the under-resourced Accra office of the Domestic Violence Victims Support Unit (DoVVSU) sees approximately 40 women a day in its cramped office.<sup>145</sup> The Special Rapporteur noted that the DoWSU comprised of 66 desks with 320 staff and only five cars and 10 motorbikes for the entire country.<sup>146</sup> This has often meant that victims need to hire a taxi to bring police to arrest the perpetrators. Furthermore, because the DoVVSU does not own a camera, victims must take photographic evidence themselves, often a humiliating and expensive process.<sup>147</sup> Because the victims of rape and domestic abuse are often minors with no income, these shortcomings have severely hampered the victim's access to justice in several cases.

Ghana continues to maintain criminal sanctions against consensual same-sex activity. Section 104 of the Criminal Code (1960), as amended in 2003, provides: "(1) Whoever has unnatural carnal knowledge (a) of any person without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or (b) of any person with his consent is guilty of a misdemeanour. (2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner...". In 2006, the government banned an LGBT conference scheduled to take place on 4 September in Koforidua.

# 3.2 Compliance with the Pledge

In its pre-election pledge, Ghana committed to cooperate fully with UN treaty bodies and pledged to participate actively in the work of the UN Human Rights Council with a view to strengthen it. However, at the Council Ghana continued to support a code of conduct that would constrict the Council's Special Procedures.

In its pledge Ghana committed to strengthen its policies for the advancement of women and to eliminate gender discrimination, it also reiterated its commitment to the survival, development and protection of children in issues that affect child rights. Ghana also stressed on the availability of legal provisions to tackle traditional practices harmful to women such as female genital mutilation and also emphasised the establishment of the Domestic Violence Victims Support Unit. Furthermore, Ghana highlighted provisions of its 1992 Constitution, which guarantee fundamental rights and freedoms. However, in spite of its pledge, human rights abuses by the police and by mining companies continued to occur while repeated complaints of the occurrence of harmful traditional practices and the low capacity of the Domestic Violence Violence Victims.

# 1. Background

# 1.1 Context

India, having the world's second largest population is, by its own statements, also the world's largest democracy. British India gained independence from colonial rule in 1947, and was divided into two newly created states – modern-day India and Pakistan. As Hindu and Muslim populations moved across the borders, the 'partition' led to the single largest mass movement of people in history. India is generally a secular, plural and largely tolerant society where most of the World's religions coexist. It also retains the second largest Muslim population in the world after Indonesia, and has developed a solid democratic system, including a robust free press and active civil society participation. Spurred by burgeoning growth in the IT sector, a large pool of skilled workers, and recent infrastructural improvements, India's economy ranks twelfth in the world on nominal GDP (PPP), and has registered a constant growth rate of around nine per cent, making it one of the fastest growing economies in the world. Nevertheless, given its many problems including the traditional caste-based system, communal tensions, frequent sectarian violence and terrorism, endemic gender discrimination, flaring class conflicts, extreme poverty, systemic corruption and vast economic disparities, India faces significant human rights challenges. There is considerable evidence of human rights violations, denial of rights, lack of access to justice, weak systems of oversight of state authorities, and a significant impunity for state actions that threatens not only its security, but also its quintessentially democratic institutions.

# **1.2 UN Treaties**

India is party to six core international Human Rights instruments, inter alia the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC) and its two Optional Protocols. More recently, it has also ratified the Convention on the Rights of Persons with Disability (CPD) and has signed the Convention on Enforced Disappearances (CED).

India has not signed the Convention on the Protection of the Rights of All Migrants Workers (ICRMW), the two Optional Protocols to the ICCPR, the Optional Protocol to CAT and the Optional Protocol to CEDAW. Other notable omissions include the Rome Statute of the International Criminal Court, the Palermo Protocol supplementing the Convention against Transnational Organised Crime, the Convention relating to the Status of Refugees and its Protocol, the Convention relating to the Status of Refugees and the Convention of Statelessness.

# **1.3 UN Reporting History**

India has completed some of its reporting requirements under international instruments. However, there are currently five reports due to be submitted, of which two are overdue.

India has completed three rounds of reporting under ICCPR, but has owed one report since 2001. Under ICESCR, it has completed five rounds of reporting, but one report has been overdue since 2001. Recently, India has submitted its overdue reports for CEDAW from 1998 and 2002, with the fourth and fifth reports due by 2010. India has no reports due under CERD, and has already conducted two rounds of reporting for CRC. However, the initial reports to the two optional protocols to the CRC (AC and SC) are overdue since 2007.

India has not extended an open invitation to the Council's Special Procedures.

### 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, on 12 June 2007, the Special Rapporteur commended the delegation for the fact that in India, the right to food was an extension of the right to life, and that the government had taken concrete steps to tackle famine. It further stated that Indian jurisprudence was an exemplary model for the whole world to emulate.

At the Fifth Session of the Council, on 12 June 2007, India supported a statement to eliminate countryspecific mandates and supported the implementation of the Universal Periodic Review. On 14 June 2007, India also highlighted the importance of having criteria for the screening of admissibility before complaints are forwarded to states. India felt that all letters of allegations should be supported by clear evidence and agreed with the wording that the information in the text "should be direct and reliable". India supported a statement that the threshold for urgent appeals was not high enough and that further criteria were needed. On 15 June 2007, India said that NHRIs should be involved in the process.

At the Sixth Session of the Council, on 11 September 2007, India supported the lowest requirements for eligible candidates for mandate holders. On 14 September 2007, India also made special mention of its disagreement with Mr Diène that his references to the caste system in India had no relevance to racism or defamation, as caste had no basis in race. On 17 September 2007, India stated that Jammu and Kashmir is an integral part of India and that a composite dialogue with Pakistan was the appropriate forum for moving forward on the issue.

At the Sixth Session of the Council, India expressed support to the extension of three years of the mandate on freedom of religion or belief, and affirmed its support for the mandate on the right to food and its renewal. On 13 December 2007, India noted that the current mandate on IDPs would be extended by a decision of the Council, in accordance with the institution-building package.

On 19 September 2007, India suggested a new operative paragraph on the draft resolution on religious intolerance urging states to implement the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and a new operative paragraph on the duty of the mandate holder to carry out the activities of the mandate fully respecting the Code of Conduct.

At the Sixth Session of the Council, on 20 September 2007, India was critical of the idea of a minority issues forum, pointing out that the mandate of the Independent Expert had yet to be reviewed and it would be more appropriate to wait for the review to be completed.

At the Sixth Session of the Council, on 10 December 2007, India was not opposed to the rectification of the legal status of the Committee on Economic, Social and Cultural Rights in principle, but cautioned that the process to do so would be "very cumbersome". It suggested that the need for rectification should be reconsidered, since no value would be added to the work of the Committee by such a move.

On 12 December 2007, India challenged the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People's, categorisation of certain groups in India as indigenous peoples. By quoting one part of the definition of indigenous peoples as provided in the ILO Convention No. 169, while ignoring two other critical elements, the representative concluded that "we regard the entire population of India at Independence, and their successors, to be indigenous". The Special Rapporteur's reference to Adivasis or tribal peoples as indigenous peoples was "unacceptable".

At the Sixth Session of the Council, on 14 December 2007, India voted in favour of the draft on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

# 2. Pledge

### 2.1 Context to Election to the Council

India was one of the 18 Asian candidates who contested the May 2006 election to the Council. Thirteen seats were reserved for Asian states. While India won the election, Thailand, Kyrgyzstan, Lebanon, Iran and Iraq lost the election for the Asian seats. In the election, India came first among the Asian states with 173 votes. India's tenure in the 2006 elections was for one year and in May 2007 India sought reelection. Four seats were vacant for the Asian bloc in 2007 and India was re-elected with 185 votes and came first among those elected. Timor Leste and Bahrain were the Asian states that lost the elections.

### 2.2 Pledge Made

In its pre-election pledge document India committed to stand by its national mechanisms and procedures to promote the human rights of all its citizens. India also pledged to foster a culture of transparency, accountability and openness in the functioning of the government as provided for in India's Right to Information Act. India further pledged to encourage civil society efforts to promote human rights. It also pledged to eliminate discrimination and violence against women through legislations and effective implementation of existing policies. India further committed to support the Council and strengthen it. It also pledged to strengthen the Special Procedures and the UPR mechanism. In its pre-election pledge document India describes its National Human Rights Commission as a powerful independent body.

# 3. Compliance

### 3.1 Human Rights in the Past Year

The human rights situation in India continues to be concerning, as instances of abuses by security forces, capital punishment, communal tensions, unchecked violence against women, children, vulnerable groups (especially farmers and indigenous peoples), terrorist acts and caste and gender-based discrimination (for example, dowry murders) continue to take place.

The much debated Special Economic Zones (SEZ) Act of 2005, designed to accelerate economic liberalisation and meet corporate demand, continues to remain controversial and has caused further violence since the infamous Nandigram controversy on 14 March 2007. Impunity and state complicity in the land acquisition process in West Bengal have continued to generate human rights violations, as was witnessed again in November 2007, when BUPC (Committee against Land Evictions) members (comprising mostly villagers) clashed with thousands of CPI (M), the ruling party, cadres who tried to "liberate" Nandigram, prompting the National Human Rights Commission (NHRC) to conduct an investigation into the violence.<sup>148</sup> However, its recommendations to the state government have not yet been implemented, and were openly refuted by the state government.<sup>149</sup> Fresh violence erupted again in May 2008, first between BUPC members and CPI (M) cadres, where both sides exchanged fire and hurled bombs at each other,<sup>150</sup> and then between CPI (M) cadres and the Central Reserve Police Force (CRPF)<sup>151</sup> in charge of bringing order to the area.

Widespread abuses with unbridled impunity by security forces and police continue to be recorded throughout India's Northeastern belt. In the State of Chattisgarh, controversial state-sponsored anti-Naxalite campaigns, in place since 2005 and involving heavily arming tribal groups and villagers to combat naxalites have come under fire for committing various human rights violations.<sup>152</sup> The conflict between state and non-state actors in Naxalite-affected areas continues to pose a substantial threat to local communities (mostly tribal people and peasants) caught in the crossfire. One example of this was the rape of a 15-year tribal girl by police officers on 9 July 2007 in Jharkhand, who was reportedly threatened to be charged as a Maoist insurgent if she complained.<sup>153</sup>

Police misconduct and inaction has also been on the rise over the last year. One example includes the brutal rape and murder of 15-year-old British citizen Scarlet Keeling in Goa on 18 February 2008, where local police tried to cover up her murder by claiming "accidental drowning due to intoxication". Only after the case attracted widespread media attention and diplomatic pressure was applied, did the police conduct a second post-mortem that showed over 50 bruises on her body.<sup>154</sup> Whilst this case received attention due to the fact that a foreign national was involved, it should be noted that rape in India is extremely common and oftentimes under-reported or unable to be reported due to police failure to lodge an FIR or refusal to do so. High-profile cases, such as the one above, along with police inaction in rape cases involving MPs, including the case of Narender Kumar Kushwaha, who raped a party worker in Madhya Pradesh in February 2008, at the time of writing this report was yet to be arrested despite a warrant being issued for his arrest,<sup>155</sup> continue to garner media attention and thus increase the likelihood of investigation and judicial proceedings. Cases involving lesser known or low-profile victims are less likely to receive the same attention and be investigated or prosecuted. Desperation on the part of lowercaste female rape victims recently sparked protests - including at least two separate incidents of victims publicly disrobing themselves in front of police officers within the month of May 2008,<sup>156</sup> and then being arrested for obscenity without their cases being heard. On a smaller scale, police inaction has also been linked to alleged bias towards minorities, as was witnessed in the aftermath of the Godhra riots in 2002. One illustrative instance took place in Delhi's Sultanpuri area on 24 April 2007, when police officers beat and eventually killed an elderly Muslim resident, Hafiz Kamaluddin.<sup>157</sup> After his brutal killing, the police subsequently rounded up and detained most of the witnesses, who were then intimidated and beaten. The Universal Period Review, the Human Rights Committee (HRC), CRC, CERD and the Special Rapporteur on Torture, have all expressed concern with cases involving custody deaths, ill-treatment and torture in detention.158

Aside from illegal police misconduct, many of India's statute books contain draconian laws that are clearly in disharmony with international human rights standards. Four examples that stand out are the Chattisgarh Special Public Security Act, 2005, the Armed Forces Special Powers Act, 1958 (AFSPA), the Jammu and Kashmir Public Safety Act, 1978 (PSA) and the National Security Act, 1980 (NSA). Under these provisions, several violations have been conducted – abuses, rapes, arbitrary arrests, and torture. Notably, where Human Rights Defenders (HRDs) have tried to stop these abuses, they have often borne the brunt of unbridled impunity. Two examples where this happened were the detention of human rights activist, Dr. Binayak Sen, on allegedly spurious charges<sup>159</sup> in Chattisgarh during May 2007, and the forceful ending of Irom Sharmila's seven-year hunger strike with the forced nasal insertion of a rubber feeding tube in Manipur.<sup>160</sup> The HRC and the Special Representative of the Secretary-General on the situation of HRDs have already expressed concern about the authorities' excessive use of force against demonstrators, including HRDs and journalists whose work covered sensitive areas in 2005-06.<sup>161</sup>

In sensitive areas where the army has had an extended presence, like the State of Jammu and Kashmir and the North-East, continued abuses, extrajudicial killings, enforced disappearances and other heavyhanded tactics against civilians have been in evidence. One example occurred in Bandipora, Jammu and Kashmir, when security forces opened fire and "lathi-charged" hundreds of protestors gathered to protest the molestation of a local 17-year-old girl by two army officers, severely injuring at least 30 people.<sup>162</sup> On 29 March 2008, Srinagar-based Association of Parents of Disappeared Persons produced a report alleging the discovery of mass graves, amounting to 940 unidentified people since 2006 in 18 villages in Uri district alone. Because of immunity provided by the PSA and close proximity with the Line of Control, these mass graves cannot be investigated without the special permission from the Armed Forces, who claim the dead to be "foreign militants" and enemy combatants.<sup>163</sup>

India's caste system continues to spark violence against Dalits and other Scheduled Castes and Tribes. CERD has continually reaffirmed that discrimination on the grounds of caste is fully covered by Article 1 of ICERD. However, India has repeatedly ignored this recommendation claiming that caste-based discrimination is not a form of racial discrimination, and that its Scheduled Tribes are not covered under the mandate of CERD.<sup>164</sup> Furthermore, CEDAW, CRC and CERD have expressed concern over specific practices encouraging violence towards Dalit women and children, specifically pointing out the ongoing

practice of devadasis (forced ritualised prostitution) and sexual exploitation of Dalit and tribal women who were trafficked and forced into prostitution.<sup>165</sup> However, CEDAW also appreciated the enactment of the Domestic Violence Act of 2005, and called for the government to enforce the act through proper implementation of mechanisms to ensure that all victims can benefit from its provisions.<sup>166</sup>

Whilst the Right to Information Act, 2005 provides considerable transparency and accountability, government ministries have yet to fully accept it, and various setbacks have been encountered.<sup>167</sup> Cases continue to be reported where officials resistant to the rules of transparency, and corruption and collusion between state and non-state actors continues to take place in spite of the increased risk of withholding information from the public, due to factors such as lack of public awareness, disharmony in fee structures between states, and in general, the incomplete implementation of the Act.

Enormous backlogs in the court system has worsened, with approximately 70 per cent of all jail inmates classified as under trials (pre-trial detainees).<sup>168</sup> Even the newly formed bodies, designed to improve the administration of justice, such as the National Human Rights Commission suffer from the same endemic backlog and inefficiency.

The Foreign Contribution Regulation Bill, 2006, currently awaiting ratification by Parliament, provides for severe restrictions on foreign funding for organisations that are classified as "organizations of a political nature, not being political parties". This rather vague classification, and the power to grant a registration certificate authorising an organisation to receive foreign funds is left to administrative discretion in the Bill, which would consequently hamper civil society space and advocacy in places where it is needed most within India. The Bill has received much criticism and has yet to be enacted.<sup>169</sup>

### 3.2 Compliance with the Pledge

India has pledged to abide by its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of its citizens. India's pledge to foster a culture of transparency, openness and accountability in the functioning of government has largely been fulfilled, with the ratification of the Right to Information Act, 2005. However, its implementation as an integral and functional part of India's governance has yet to be achieved.

India's promise to strengthen and encourage civil society efforts seeking to protect and promote human rights have been seriously comprised with many high-profile cases of HRDs bearing the brunt of impunity from state forces. Furthermore, the Foreign Contributions Regulations Bill, 2006, if passed into law, would provide government with large discretionary powers to intervene and could seriously undermine the smooth operation of a largely free and democratic environment for civil society in India.

Whilst India has promised to eliminate gender and caste-based discrimination through legislation (for example, the Domestic Violence Act, 2006) and proper implementation, the human rights situation of women, children and the Scheduled Castes and Tribes continues to disappoint. Aside from deep-rooted and recurring violations such as dowry deaths, female foeticide and infanticide and violence against Dalits and religious minorities, India's reluctance to accept international law mechanisms to address these problems has been highlighted. India's refusal to apply Article 1 of ICERD to its Scheduled Caste and Tribes has been highlighted in the Universal Periodic Review conducted in April 2008.<sup>170</sup>

While India has pledged to participate constructively in developing modalities for universal periodic review by the Human Rights Council and in reviewing and strengthening the system of special procedures, no invitation has been extended to the Council to use these procedures, and at the Council, India sought to eliminate country-specific procedures within the UPR. Furthermore, India has only replied to 19.3 per cent of the communications sent via these special procedures, and has not responded to any of the 12 questionnaires sent by special procedures mandate-holders.<sup>171</sup> This suggests that whilst India claims to be committed to UN HR treaty bodies, its actions continue to cast a shadow on the sincerity of the country in upholding and implementing its various international commitments.

# 1. Background

# 1.1 Context

Malaysia achieved independence in 1957 as the Federation of Malaya. In 1963, three former British colonies, Sabah, Sarawak and Singapore, joined the federation. In 1965, Singapore withdrew and became a separate country, creating the Malaysia we know today, with 13 states in a federal structure. During the Second World War, Malaysia was occupied by the Japanese and immediately after the war it turned into one of the first Cold War battlegrounds. Between 1948 and 1960, as it moved towards independence, Malaysia largely remained under emergency laws, with British and Commonwealth troops on the ground and engaged in counter-insurgency operations against Malaysian Communist groups. Malaysia is a multi-ethnic country with a Malay majority and a minority of Chinese, Indians, indigenous and other groups. After race riots in 1969, the government began a policy of positive discrimination towards the majority Malays. This context continues to inform the relationships between Malaysia's different ethnic groups today. Malaysia experienced strong economic growth, and remains an extremely strong economy, despite the 1997 South East Asian economic crisis.

# 1.2 UN Treaties

Malaysia is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Malaysia also signed the Convention on the Rights of Persons with Disabilities (CPD).

Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention for the Protection of All Persons from Enforced Disappearance (CED), the Convention Against Torture (CAT) or the Convention on the Protection of the Rights of All Migrants Workers (CMW). Malaysia has not signed either the Optional Protocol to CEDAW or the two Optional Protocols to CRC.

# 1.3 UN Reporting History

Malaysia has fulfilled its reporting requirements under CRC and CEDAW.

Malaysia has not extended an open invitation to the UN Human Rights Special Procedures.

# 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, Malaysia supported a statement to eliminate country-specific mandates. It also highlighted its support for the code of conduct. Malaysia said that the level of development and the specific situation of each country should be taken into account during the process. At the Sixth Session of the Council, on 19 September 2007, Malaysia suggested a new operative paragraph on the draft resolution on religious intolerance on the duty of the mandate holder to carry out the activities of the mandate fully respecting the Code of Conduct.

At the Sixth Session of the Council, on 25 September 2007, Malaysia expressed its commitment to the implementation of the Durban Declaration and Programme of Action and expressed the view that the Durban Review Conference should assess the implementation of the (DDPA) but also address contemporary and emerging forms of racism, racial discrimination and related intolerance.

At the Sixth Session of the Council, on 12 December 2007, Malaysia complained that the report on the situation of human rights and fundamental freedoms of indigenous people was drawn from NGO

information and did not reflect the views of states. It recalled Article 6(b) of the Code of Conduct, and alleged that this report constituted a "clear disregard for the code".

At the Fifth Session of the Council, Malaysia supported the continuation of the OPT mandate till the end of the Occupation. At the Sixth Session, on 14 December 2007, Malaysia abstained on the draft proposed by the EU on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

# 2. Pledge

# 2.1 Context to Election to the Council

Malaysia was one of 18 Asian candidates that contested the May 2006 election to the Council for the 13 seats reserved for Asia. Malaysia came fifth in the Asian group, with 158 votes. Thailand, Kyrgyzstan, Lebanon, Iran and Iraq were unsuccessful in securing a seat for the Asian group.

# 2.2 Pledge Made

In its pre-election pledge Malaysia stated that it would work to make the Council a "strong, fair, effective, efficient and credible vehicle for the promotion and protection of human rights worldwide". It also promised that it would actively participate in the setting of norms, encourage a spirit of cooperation based on the principles of mutual respect and dialogue, and promote coherence in the Council. Malaysia stated that it would support the Office of the High Commissioner on Human Rights, as well as other UN agencies and actors to achieve internationally agreed objectives. The country promised to actively support international action to advance the rights of vulnerable groups, including women and children. Malaysia highlighted that in the context of the global threat of terrorism it had succeeded in achieving a balance between human rights and security requirements, drawing lessons from its own experience in combating armed insurgence.

# 3. Compliance

# 3.1 Human Rights in the Past Year

The human rights situation in Malaysia has come under scrutiny in the past year due to a variety of new critical issues that have surfaced, as well as the worsening trend of past violations.

Arbitrary detention and police torture continue to remain a critical problem in Malaysia. The Internal Security Act, 1960 (ISA) allows the police to detain people without trial for an indefinite period of time on the basis of a suspicion of a threat to national security. This means that police have the power to arbitrarily arrest and detain people for up to 60 days, including dissenters, religious groups and protestors. The ISA has been often used to arrest people without discretion, although it has been drafted to be used only in specific circumstances. Detention camps such as the Kamunting Detention Camp (KEMTA) have been set up to house the detainees, and it was alleged in late 2007 that around 90 people were languishing in that prison alone.<sup>172</sup> The latest figures indicate that approximately 67 people are currently held there. Human rights groups have reported that detainees are kept at secret locations, incommunicado and are subject to degrading treatment and torture.<sup>173</sup> The plight of Sanjeev Kumar Krishnan is illustrative of the nature of abuses at KEMTA, as he was allegedly subject to torture during his 60-day detention in March 2008, and has, as a result, become semi-paralysed and wheel-chair bound.<sup>174</sup> Rights groups have pointed out that whilst Malaysia has actively joined the international chorus condemning the United States for maintaining the Guantanamo Bay Detention Centre, the government is very reluctant to reform its own antiguated laws. In spite of such opposition, the current Prime Minster stated that the act was deemed "necessary" to counter "threats in the form of organised and systematic indoctrination and subtle propaganda" in July 2007.<sup>175</sup> Following his statement, it was reported during the same month that

a cabinet minister had allegedly threatened to invoke the ISA to curb the "growth of irresponsible alternative media", with a specific intention to target bloggers who criticised the king and Islam, offences that are punishable with a life sentence.<sup>176</sup>

Furthermore, a number of ethnic minority groups and religious groups have been targeted and detained under the Act. On 25 November 2007, a gathering of 10,000 ethnic Indians participated in a demonstration organised by the HINDRAF (Hindu-Rights Action Force), a coalition of activists alleging discrimination in employment, education and socially based on religious and ethnic grounds. The protests were largely peaceful, but were forcibly broken up, and several people were arrested and beaten. While most of the detainees were released shortly after, five HINDRAF leaders continue to remain in police custody based on ISA provisions.<sup>177</sup> On 16 February 2008, it was reported that a second HINDRAF protest was put down and 60 people, including two leaders were arbitrarily detained under the ISA.<sup>178</sup> Ethnic Hindus were not the only religious group to have suffered from detention under the ISA. Reportedly, at least 83 people were detained in 2007 for allegedly being part of "extremist Islamic groups", including the "terrorist outfit", Jemaah Islamiyah.<sup>179</sup> In a rare exception, the Kuala Lumpur High Court awarded 2.5 million RM to a human rights activist in October 2007, after he was unlawfully detained and tortured in 1998 under the ISA.<sup>180</sup>

The rising numbers of custodial deaths are a result of a wider problem of lack of oversight mechanisms within Malaysia's flawed policing system. It was alleged that in 2007, 11 instances of custodial deaths occurred, of which none have been properly investigated. Many of those cases were reportedly prone to allegation of foul play, for example, on 20 January 2008 a man was reported dead in custody due to "a fall in toilet [sic]".<sup>181</sup> In 2005, the Royal Commission on the Police was set up to investigate rising cases of police brutality, and it recommended the setting up of the Independent Police Complaint and Misconduct Commission (IPCMC). While the government had promised to set it up by 2006, nothing has yet come of the Draft Bill. After pressure to implement the recommendations, the parliament set up an internal, non-independent complaints procedure under the Special Complaints Commission Bill, 2007.<sup>182</sup>

Malaysia's policy towards immigrant workers, refugees and asylum seekers has also attracted widespread criticism from civil society circles. Migrant workers and refugees from Burma and Indonesia, as well as from Sri Lanka, India, and Bangladesh have traditionally been attracted by the peninsula's economic opportunities. However, the government has also taken a hard-line stance against these workers, including extending the mandate of a civilian militia (Volunteer Peoples' Corps or Rela) to search for and arrest illegal migrants and refugees without warrants, enter any premises, bear arms and use them with impunity, and demand documents. They are paid 30 RM for each illegal migrant caught, and the migrants are then detained in overcrowded detention centres where they are allegedly beaten before being deported. The Rela is said to be almost 400,000 strong, and abuses ranging from rape, violence, torture, sexual abuse, racial discrimination and arbitrary detention have been widely reported in the media. The modus operandi of Rela is said to include breaking into "suspects'" houses without warrants in the middle of the night, fully armed, and arrest and intimidate people arbitrarily.<sup>183</sup> Between January and November 2007, Rela allegedly screened 156,070 people and had detained 30,332 people for not having travel documents.<sup>184</sup> On 11 September 2007, it was reported that an Indonesian woman was repeatedly tortured, raped and abused by a Rela member for a whole month before she was discovered by another Rela volunteer who rescued her. After seeking refuge in the Indonesian embassy, she was deported due to her illegal status; no criminal proceedings were initiated against the accused due to lack of "sufficient evidence".<sup>185</sup>

The lack of religious freedom continues to plague the country due to discriminatory laws, as well as application of Islamic Sharia courts (known as Syriah in Malaysia) to non-Muslim minorities. Furthermore, minorities were actively persecuted and discriminated against, through actions such as destruction of places of worship, detention of non-Muslims for offences such as blasphemy and apostasy, harassment from authorities, work-related discrimination and so on. In an unusual case that attracted international media attention, a woman was sentenced to two years imprisonment after being found guilty for a second time to apostasy, due to her participation in a cult called the "Sky Kingdom" that undertook anti-Islamic practices such as inter alia worshiping a giant teapot. She had been arrested earlier, together with

58 other followers of the Sky Kingdom sect on 21 July 2005.<sup>186</sup> A more recent incident, in November 2008, concerns women wearing trousers – where Malaysia's police force, following Malaysia's National Fatwa Council recently issued a religious ruling that wearing trousers was un-Islamic, stating that protests over an edict against Muslim women wearing trousers are a security threat.<sup>187</sup> These are not the only instances where Malaysia's abusive policies on religious matters have been used as a tool for harassment. In July 2007, it was reported that one woman, born Muslim but brought up as a Hindu, was detained by religious authorities for 180 days after applying in an Islamic Syriah Court in Malacca to have her Muslim name and religion changed. Her marriage to her Hindu husband was also not recognised as it is considered illegal for Muslims to marry non-Muslims.<sup>188</sup> In the Lina Joy case, it was reported in May 2007, that the Federal Court, in a 2-1 verdict, dismissed her appeal reversing a former decision to disallow the removal of the word "Islam" from her ID card after her conversion to Christianity in 1998.

In an extremely unpopular move, the government moved to uphold a restriction on the usage of "Islamic terms" by non-Muslim groups, a part of many discriminatory blasphemy laws in the country. Among others, the world "Allah" and the word "Khuda", both used extensively by the Sikh community were out of bounds for non-Muslims.<sup>189</sup>

Homosexuality continues to remain a highly taboo practice in Malaysia. Strict laws prohibiting "unnatural" consensual sex remain in place, and are frequently used for prosecutions. Section 377 of the Penal Code prohibits heterosexual and homosexual sodomy with punishments including up to twenty years in prison and/or fines and flogging. It prohibits acts of "gross indecency with another male person" with punishments including up to two years in prison. In a high-profile case, former deputy PM Anwar Ibrahim was charged with sodomy with a male aide in 1998, and was sentenced to nine years in prison. In 2004, the Supreme Court dropped all charges and released him due to rising international pressure based on irregularities in his trial. Under Malaysian law, a convicted felon is not allowed to stand for public office until five years after the completion of the sentence, and in a widely anticipated comeback, he was scheduled to run for by-elections on 16 August 2008. However, he was arrested again on 16 July 2008 on similar sodomy charges, and was kept in custody for a day, after which a Sessions Court granted him bail. Many governments and international civil society groups condemned his arrest, and termed it politically motivated. Subsequently, Mr. Ibrahim was released and won the by-election on 28 August 2008 as a Member of Parliament.

# 3.2 Compliance with the Pledge

In its pre-election pledge Malaysia stated that it would work to make the Council a "strong, fair, effective, efficient and credible vehicle for the promotion and protection of human rights worldwide". However, at the Council, Malaysia supported the elimination of country specific mandates and was in favour of confining the Council's Special Procedures within a code of conduct.

Malaysia also promised to actively support international action to advance the rights of vulnerable groups, including women and children. Despite this open-minded approach to the situation of vulnerable groups including women and children around the world, within Malaysia's domestic sphere vulnerable groups such as women, religious minorities, sexual minorities and migrant workers continue to suffer.

Malaysia further highlighted that in the context of the global threat of terrorism it has succeeded in achieving a balance between human rights and security requirements, drawing lessons from its own experience in combating armed insurgence. Contrary to this claim, Malaysia still lives under the shadow of abusive institutions and frameworks such as the Internal Security Act and security establishments that belong to Malaysia's troubled counter-insurgency era.

# 1. Background

### 1.1 Context

The Republic of Mauritius gained its independence in 1968, ending a colonial history of Dutch, French and British administration. The country has a multi-ethnic population composed of an Indo-Mauritian majority, a substantial Creole community and small Sino and Euro-Mauritian minorities. Before its independence, the British separated the Chagos Islands from Mauritius to form the British Indian Ocean Territory. Approximately 2,000 Chagos islanders were forcibly removed from their homes and sent to Mauritius. The Republic, along with the Seychelles, has been engaged in an international dispute over sovereignty over the Chagos Islands ever since. Following its independence, Mauritius has moved away from a plantation economy to develop its industrial, financial, and tourist sectors. Mauritius is now recognised as one of the economic success stories in the African Union (AU).

# **1.2 UN Treaties**

Mauritius is a party to the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC) and its two Optional Protocols. Mauritius also signed the Convention on the Rights of Persons with Disabilities (CPD).

Mauritius has not signed the Convention on the Protection of the Rights of All Migrants Workers (CMW), the Convention for the Protection of All Persons from Enforced Disappearance (CED) nor the Second Optional Protocol to ICCPR.

# **1.3 UN Reporting History**

Mauritius has completed some of its reporting obligations under international treaties, but has failed to satisfy all of its reporting requirements. There are currently six reports overdue under two of the main international human rights instruments.

Mauritius has fulfilled its reporting requirements under ICCPR, ICESCR, CRC and CEDAW. The country has completed 15 rounds of reporting under CERD, but still owes reports for 2001, 2003, 2005 and 2007. It has completed two rounds of reporting under CAT, but one report has been overdue since 2002.

It has not extended an open invitation to the UN Human Rights Council's Special Procedures.

### 1.4 UN Voting Patterns and Performance at the Council

At the Sixth Session of the Council, on 26 September 2007, Mauritius co-sponsored the draft resolution extending the mandate of the Independent Expert on the human rights situation in Burundi.

At the Sixth Session of the Council, on 14 December 2007, Mauritius voted in favour of the draft on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

# 2. Pledge

## 2.1 Context to Election to the Council

Mauritius was one of 13 African countries that contested the May 2006 elections to the Council. The number of candidates was the same as the number of seats reserved for Africa. The results of the elections were pre-determined. In the election, Mauritius came thirteenth among the African group with 178 votes.

### 2.2 Pledge Made

In its pre-election pledge Mauritius committed to uphold the primacy of democracy and good governance, to promote its citizens' human rights and to strengthen national institutions with a mandate to protect and promote human rights. Mauritius drew attention to the new sex discrimination division of its National Human Rights Commission as evidence of its commitment to human rights at home. It also pledged to advance human rights internationally. The country committed to contribute to the enhancement of UN human rights activities and to participate actively in the work of the UN Human Rights Council. Mauritius highlighted its experience as a multi-ethnic population to stress its commitment to enhance intercultural dialogue and understanding among civilisations.

# 3. Compliance

### 3.1 Human Rights in the Past Year

Mauritius has made positive steps in the past year to reconcile its human rights situation with its preelection pledges to the UNHRC. However, a number of issues have continued to keep Mauritius from living up to its commitments.

Statements from the Government of Mauritius have suggested that the country's good record on media freedoms could be in jeopardy. Last year, Mauritius was ranked twenty-sixth on the Reporters Without Borders index of media freedoms. Concerns were expressed in the National Assembly about a proposed bill that would enhance the principle of anti-defamation found within the Constitution. Adding to such fears, on 20 November 2007 Navin Ramgoolam, stated in the National Assembly that it would be "totally in order for legislation to be introduced with a view to strengthening existing provisions aimed at preventing abuse of freedom of the press amounting to unwarranted intrusion into the privacy of citizens and scurrilous and defamatory, if not untrue, allegations against citizens of our country". However, the leader of the opposition then noted that Mauritius already had laws to protect against defamation and that many countries were in fact moving in the opposite direction, and liberalising their press freedom laws.<sup>190</sup> Two days later, Reporters Without Borders reported that three journalists were arrested on charges of defamation and brought into police headquarters for questioning about a media report, which alleged that a large sum of money had been found in a police officer's mailbox. The three were the first journalists to be arrested in Mauritius in 13 years and were later released on bail.<sup>191</sup> In his speech to Parliament on 20 November 2007, Prime Minister Ramgoolam mentioned the story about the money in the mailbox as an example of why stricter anti-defamation laws were needed.<sup>192</sup>

A Central Statistics Office report released during August 2007, stated that whilst the rate of juvenile delinquency in Mauritius was increasing<sup>193</sup> the Ombudsman for Children expressed concern that the state response was highly inadequate. Juvenile detention centres are not suited for rehabilitation and often mix violent juveniles with those convicted of less serious offences. Prison guards without proper training are charged with caring for juvenile offenders. In her report to the Prime Minister, the Ombudsman notes a lack of educational facilities and activities in the detention centres, reports of violence and abuse by guards, the non-existence of half-way homes for re-integration into society, and a complete absence of post-release supervision or support.<sup>194</sup>

Numerous incidents of police abuse have been alleged in the media in 2007. In June 2007, a recording artist alleged that he was arbitrarily searched and when he resisted, was beaten and taken to a police station where he was humiliated and forced to sing as though he was on stage. He also alleged that he was made to sign a statement and told to leave after he was threatened not to tell anyone about the incident.<sup>195</sup> In October 2007, it was alleged that police officers forced 20 workers at a call centre to disrobe while they were searched intimately in a humiliating fashion in order to try and find a mobile phone which one of their sisters claimed had been stolen in the office.<sup>196</sup> The National Human Rights Commission (NHRC) has reported these two incidents as examples where the accused police offers were booked and suspended after investigation.<sup>197</sup> On 11 February 2008, it was reported that a migrant worker was brutally beaten by policemen at Souillac Police Station after he reprimanded a young boy who turned out to be the son of a high-ranking inspector.<sup>198</sup> One custodial death was also reported to have occurred on 17 May 2007, wherein the detainee allegedly hanged himself in the cell and evidence of negligence on the part of police officers was found after an independent enquiry into the incident.<sup>199</sup> These events underline the necessity for the establishment of an independent police complaints mechanism, which the Prime Minister promised but has yet to deliver on.

While the new sex discrimination division of the NHRC is a positive step towards protecting women's rights, the mandate of division has not yet covered critical issues such as violence against women, particularly, domestic violence, sexual abuse and rape of young girls and marital rape. It was also alleged in media reports that sex workers who are under constant threat of contracting HIV, and prone to all kinds of violent abuse, were largely ignored by the government.<sup>200</sup>

According to a newspaper investigation, migrant workers continue to face very difficult living and working conditions and are afforded little, if any, legal protection. A major European designer apparel firm has been accused of using sweatshop labour in Mauritius to manufacture its clothing. The report alleges that labourers from South Asia were required to pay a fee to be hired in Mauritius, where they would work 12 hours a day and six days a week, and receive around half the average wage of Mauritian citizens. Employees have claimed that they were forced to sleep in crowded dormitories with just one toilet per 100 workers. Some have claimed that if they complain about living or working conditions they risk being fired and sent back to their home countries.<sup>201</sup> Whilst over 16,000 migrant workers are present in Mauritius, the government has done little to investigate the widespread abuse (hazardous working conditions, long working hours, low pay, etc). In Mauritius, unemployment of Mauritian citizens due to migrant labour is given precedence over protecting the rights of migrants. Notably, while Mauritius is one of the few African countries to receive a large proportion of migrant labour, it has not signed the Convention for the Protection of the Rights of Migrant Workers.

The United Nations Subcommittee on Torture undertook a visit to Mauritius in November 2007. They toured several detention facilities and made preliminary recommendations.<sup>202</sup> It is reportedly understood that the report was severely critical. The observations and recommendations of the Subcommittee remain confidential unless they are released by the host country. As yet, the government has not released the report of the Subcommittee to public scrutiny.<sup>203</sup> It is noteworthy to also mention that under OP-CAT (ratified in June 2005), the government is obliged to set up a National Preventive Mechanism (NPM) on torture within one year of becoming a party to it.

Gender-based discrimination and violence against women remain critical issues in Mauritius. The NHRC reported that 61 cases of gender-based discrimination, including sexual harassment were filed during 2007. It was also reported that many rape cases filed by victims get dismissed owing to delays before cases reach trial.<sup>204</sup> Between January and May 2007 alone, there were 239 registered cases at the Ministry of Women regarding gender-based violence.<sup>205</sup> Rape and violence against women continue to be regularly reported in the media. In an illustrative case, it was reported that between May 2007 and February 2008, a 16-year-old girl was raped and sodomised repeatedly under threat behind some bushes.<sup>206</sup> In another case, a 17-year-old girl was gang raped by four men in front of her 16-year-old boyfriend who was placed under threat of a knife by one of the accused on a public beach.<sup>207</sup>

During 2006, the National Action Plan to end gender violence was approved. The past year has seen controversy surrounding the attempted passing of the Sexual Offences Bill, which was intended to be a central part of that action plan. The Bill would have addressed some issues raised by the CEDAW Committee in August 2006. Despite having some weaknesses the Bill was considered by some gender activists to be a "progressive piece of legislation". Nevertheless, whilst marital rape has been singled out as a problem in media reports, both the draft SADC Protocol on Gender and Development and the draft Sexual Offences Bill have remained silent on the issue.<sup>208</sup> Unfortunately, some items such as the decriminalisation of consensual anal sex have delayed enactment.<sup>209 210</sup>

In June 2007, activists praised the inclusion of an entire chapter of the budget on issues of gender discrimination. According to them, the government had often spoken about initiating programmes to support activities against gender discrimination, but this was the first time that they had been included in the budget. The budget is expected to help close the gap between the five per cent unemployment rate for men and the 15 per cent unemployment rate for women. The budget also included financial support for women and children who are victims of physical abuse.<sup>211</sup>

# 3.2 Compliance with the Pledge

In its pre-election pledge, Mauritius committed to upholding the primacy of democracy and good governance, to promote its citizens' human rights and to strengthen national institutions with a mandate to protect and promote human rights. The active functioning of the NHRC, with a proper complaint system and resources to either investigate or transfer cases to relevant ministries has brought about a positive change to the human rights situation in the country. Nevertheless, several cases examined in the Commission's report were either pending investigation or were dismissed on the grounds of lack of evidence. The government has not yet implemented its police-reform policy in setting up an independent investigation commission for those wishing to complain against abuses by the police.

In its pledge, Mauritius drew attention to the new sex discrimination division of its National Human Rights Commission as evidence of its commitment to human rights at home. Whilst the new sex discrimination division of the NHRC is a positive step towards protecting women's rights, the mandate of division has found wanting and reports of violence against women, particularly, domestic violence, sexual abuse and rape of young girls, dire state of sex workers and marital rape continue.

Mauritius also pledged to advance human rights internationally. However, it is yet to become a party to the CMW, CED and the Second Optional Protocol to the ICCPR.

# Nigeria

# 1. Background

## 1.1 Context

Nigeria is a federal system, with executive power vested in the President. The country is resource-rich and ethnically diverse, and is made up of 36 states and one federal capital territory. After several periods of military rule over a 16-year period, Nigeria returned to democracy in 1999. In 2003, President Olusegun Obasanjo won a second term in Nigeria's first civilian run election. The Commonwealth election observers concluded that the 2003 elections were largely representative of the will of the Nigerian people, but drew attention to concerns regarding vote rigging, violence and intimidation in some areas of the country. An attempt by Obasanjo to push through an amendment to the Constitution to allow a president to stand for elections for a third term was blocked by the Senate in May 2006.

Nigeria went to the polls again in April 2007. International observers were critical of the elections and have reported that the elections failed to meet both the hopes and expectations of the Nigerian people, or international standards for free, fair and credible elections. The elections returned the People's Democratic Party into power for a third term, with Umaru Yar'Adua succeeding Obasanjo. Yar'Adua was described as an obscure national figure before being elected as the presidential candidate of the ruling party, due to the support of the former President Olusegun Obasanjo.

The Nigerian economy relies heavily on the presence of natural resources with an oil industry representing the vast majority of Nigeria's exports. This dependency has been worsened by a failure of the successive rulers of the country to diversify the economy.

## **1.2 UN Treaties**

Nigeria is a party to the International Covenant on Civil and Political rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC) and its two Optional Protocols. Nigeria has also signed the Convention on the Rights of Persons with Disabilities (CPD).

Nigeria has not signed the Convention on the Protection of the Rights of All Migrants Workers (CMW), the Convention for the Protection of All Persons from Enforced Disappearance (CED), the two Optional Protocols to ICCPR and the Optional Protocol to CAT.

# **1.3 UN Reporting History**

Nigeria has completed some reports due under international treaties, but has failed to satisfy most of its reporting requirements, particularly under the Convention Against Torture.

The country has had one report overdue under ICCPR since 1999, although it completed one round of reporting under ICCPR earlier. The country has completed one round of reporting under ICESCR, but the 2000 and 2005 reports are overdue. Despite five successful rounds of reporting under CEDAW, Nigeria still owes the 2006 report. It has not completed any round of reporting under CAT. The country has fulfilled its reporting commitments under CERD and CRC.

Nigeria has not extended an open invitation to the UN Human Rights Council's Special Procedures.

### 1.4 UN Voting Patterns and Performance at the Council

On 18 December 2007, at the General Assembly, Nigeria chose to vote against a resolution calling for a moratorium on the death penalty. On 22 December 2007, at the General Assembly, Nigeria voted to approve the report of the UN Human Rights Council which endorsed Council Resolutions 5/1 and 5/2.

At the Fifth Session of the Council, on 18 June 2007, Nigeria highlighted its support for a Code of Conduct for UN Special Procedures.

At the Sixth Session of the Council, on 19 September 2007, Nigeria called for the deletion of the word "broad" in the expression "broad consultation process" for the UPR. The facilitator of the session responded that by using the word "broad" it was not necessarily specified with whom the consultations would be held, and that broad consultations could be held between various government ministries and agencies or that they could go beyond the official context to include civil society, but that this was left open.

At the Sixth Session of the Council, on 17 September 2007, Nigeria supported the mandate of the working group on arbitrary detention.

At the same Session, on 26 September 2007, Nigeria supported both the renewal of the mandate on the right to food and the continuation of the mandate of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People.

At the Sixth Session of the Council, on 14 December 2007, Nigeria announced its abstention on the draft proposed by the EU on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

# 2. Pledge

# 2.1 Context to Election to the Council

Nigeria was one of 13 African countries that contested the May 2006 elections to the Council. The number of candidates was the same as the number of seats reserved for Africa. The election results were therefore predetermined. In the election, Nigeria came twelveth among the African group with 169 votes.

# 2.2 Pledge Made<sup>212</sup>

In its pre-election pledge Nigeria undertook to participate actively in the Council and to aim at making it a credible, strong, fair and effective United Nations human rights body. It notably committed itself to full cooperation with the Special Procedures of the Council. The country pledged to maintain an open-door policy while reaffirming its preparedness to welcome UN human rights inspectors, rapporteurs and representatives carrying out their mandates. Nigeria promised to work with treaty bodies and to submit timely periodic reports. It also made a commitment to contribute actively to the development of a human rights culture and to the mainstreaming of human rights in the UN and regional organisations. Nigeria reiterated its commitment to strengthen its National Human Rights Commission to help in the promotion of human rights within its own borders and pledged to uphold the principle of non-discrimination and the rights of all its citizens. Nigeria further committed itself to the protection of all human rights, including the right to development.

# 3. Compliance

### 3.1 Human Rights in the Past Year

Nigeria's human rights situation has seen no telling improvement since the last reporting period.

In his November 2007 report to the General Assembly, the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment chronicled his visit to Nigeria by listing numerous examples of violent excesses carried out by members of the police services and personnel in detention facilities, including torture and extrajudicial killings. His report categorises torture as "an intrinsic part of the functioning of the police in Nigeria"<sup>213</sup> and is corroborated by numerous allegations of torture by detainees and supported by medical evidence.<sup>214</sup> According to the report, methods used to torture suspects included flogging with whips; beating with batons, cables, bamboo sticks, and machetes; shooting suspects in the foot; threatening a suspect with death and then shooting him with powder cartridges; suspension from the ceiling or metal rods in various positions; and being denied food, water and medical treatment. The report also points to the endemic nature of torture by giving several credible cases in which rooms and equipment dedicated to torture were found within Criminal Investigation Departments (CIDs). In addition, the report cited appalling prison conditions,<sup>215</sup> a lack of functioning police and prison complaints mechanisms and the inclusion of certain violent aspects of Sharia law within the legal framework, as further examples of Nigeria's failure to live up to its commitments under the Convention Against Torture.

Nigeria's prison services have been hit with serious allegations concerning the secret execution, whilst in detention, of a number of inmates. Nigeria has not officially abolished the death penalty, but a government representative at the United Nations claimed in November 2007 that capital punishment had not been practised for years.<sup>216</sup> However, investigations by an international human rights group found evidence of at least seven executions by hanging, which were alleged to have taken place in the past two years. All the executions were reportedly signed by the Governor of Kano, but the sentences were carried out in prisons all over the country. It was also alleged that at least two of the suspects were tried and convicted by a Robbery and Firearms tribunal without lawyers or the right to appeal their sentences.<sup>217</sup> The last claim has, however, been refuted by Nigerian human rights groups, which state that all legal channels were exhausted prior to the conviction and execution of the two convicts and that the convicts had been given legal representation.<sup>218</sup> On 17 December 2007, media reports also cited a Kano state government official confirming that seven people had been executed.<sup>219</sup> On 7 July 2008 reports indicated that three Nigerian members of parliament were trying to table a bill on the abolition of the death penalty for a first reading. The Bill is expected to be tabled in the coming months possibly around October 2008. The report also indicates that if the Bill is approved it will result in the release of around 500 inmates from death row. The same report quotes a Nigerian human rights organisation, which says that the current challenges of the Nigerian criminal justice system are such that it cannot guarantee fairness in the application of death penalties.<sup>220</sup> Furthermore, the Special Rapporteur Against Torture has alleged that a common practice after the detention of suspects includes wounding them with close-range gunshot to the feet and legs, which is intended to prevent suspects from fleeing once they have been apprehended and to make them confess under threat of death. Because many of these detainees do not receive any medical treatment for these injuries they often become infected, seriously enough in a substantial number of cases to result in their deaths, yet another cause of custodial death.<sup>221</sup> It has also been reported that overcrowding has resulted in young children being detained in the same cell as adult males.<sup>222</sup>

Numerous statements made by high-level police officials in the past year offer further evidence that the police force regularly enjoys immunity for illegal behaviour. Most notoriously, the Police Commissioner of the Federal Capital Territory is alleged to have issued a "Shoot-at-Sight" directive to all police officers who encounter suspected armed robbers, thus depriving them of the right to life and the right to fair trial.<sup>223</sup> The police force press relations officer later said that he was misquoted.<sup>224</sup> In November 2007, the Chief of the Nigerian Police, Mike Okiro, admitted in a speech made to the House of Representatives' Police Affairs Committee on the subject of his achievements as Commissioner that 785 suspected armed

robbers had been killed in exchanges of gunfire with police, from June to September of that year.<sup>225</sup> Despite calls from human rights groups that an independent inquiry should be launched, no action has been taken as of now. According to the Nigerian police's own estimates, over 10,000 people were estimated to have been killed in police encounters since 2000.<sup>226</sup>

An illustrative incident of impunity, arbitrary detention and enforced disappearances was reported to have occurred in the case of Samson Adekoya who was last seen by members of his family in police custody in a Special Armed Robbery Squad (SARS) cell, at the Lagos State Commissioner's Office, GRA, lkeja on 18 February 2008. He was alleged to have been arbitrarily detained, and remains missing despite several legal petitions and independent inquiries by family members and civil society organisations.<sup>227</sup> In another incident, police were alleged to have raided the poorest neighbourhoods in Port Harcourt City and to have arbitrarily arrested approximately 200 people, only so that they could collect money from relatives for the release of the detainees. Police corruption has reached such endemic levels in Nigeria, that when questioned, the Port Harcourt Police Commissioner reportedly had no qualms in stating that "If I told you that doesn't happen here, I would be lying to you. But there is corruption everywhere."<sup>228</sup>

Police brutality has also been witnessed in the form of rape and outright torture by security forces, as well as extrajudicial and summary executions. For instance, on 10 March 2007, *The Sunday Sun* reported the rape of a 14-year-old girl in police custody. On 2 May 2007, Radio Nigeria reported the rape of a three-year-old girl by a police constable.<sup>229</sup> International human rights groups have on previous occasions alleged that the Nigerian police force and security forces commit rape in many different circumstances, both on and off duty, and that they also use it as part of a strategy to coerce and intimidate entire communities. Such strategies were found to be particularly prevalent in the Niger Delta where rape has been committed by security forces deployed by the federal government. Furthermore, it has been alleged that security forces act with full impunity, without fear of coming under the purview of law.<sup>230</sup>

Child rights continue to be regularly endangered in Nigeria, with violations ranging from corporal punishment to violence based on gender discrimination committed by both civilians and security forces. Trafficking in young girls and women from villages to cities also continues to remain a major challenge in Nigeria. Girls aged 12-17 years are regularly trafficked from villages and brought to the city to work as maids for an average monthly wage of 1,500 Naira (US\$13), according to the National Agency for the Prohibition of Traffic in Persons (NAPTIP).<sup>231</sup> Here they are denied the right to education, and are frequently raped and beaten by employers and third parties, largely due to their vulnerable positions. Estimates by UNICEF indicate that there are 15 million children engaged in child labour in Nigeria, working as domestic servants, prostitutes or in other kinds of exploitative labour, with 40 per cent of them at the risk of being trafficked both internally and externally. Furthermore, approximately 10 million school-aged children are out of school. Of these, 4.7 million are of primary school age, while 5.3 million are of secondary school age and 62 per cent are girls. The Child Rights Act, passed at the federal level in 2003, provides for various safeguards and criminalises child labour. However, so far, only 18 out of the 36 states have ratified the Act and created mechanisms for its implementation.<sup>232</sup>

Violence against women and discrimination based on gender and sexual orientation also remain critical problems in Nigeria. Two pieces of legislation stand out: the Same-Sex Marriage (Prohibition) Act, 2006, which was fast-tracked through the National Assembly in February 2007, and is scheduled for a third reading before turning into law; and the Public Nudity Bill, which has been proposed for discussion for the third time this year. The former Bill proposes five years imprisonment for anyone who undergoes, "performs, witnesses, aids, or abets" a same-sex marriage. Those "involved in the registration of gay clubs, societies and organisations, sustenance, procession or meetings, publicity and public show of same sex amorous relationship directly or indirectly in public and in private any display of a same-sex amorous relationship" are subject to the same sentence.<sup>233</sup> The latter bill goes a long way towards hampering women's rights, as it prescribes three months imprisonment for women who expose their navel or breasts, or who wear mini skirts in public places.<sup>234</sup> On 3 July 2008, a 73-member Nigerian delegation spoke at the UN General Assembly's (GA) CEDAW Session regarding the status of women's

rights in the country and provided an update on progress made on incorporating CEDAW into domestic law.<sup>235</sup> It is noteworthy to mention that since the first attempt at passing the draft CEDAW Bill had failed, the delegation informed the GA about the progress of consultations with wider sections of society. It was also reported that Senator Eme Ufot Ekaette's Nudity Bill was criticised during the meeting and that the large delegation could not really justify its existence in the context of democratic reform.

Several allegations of corruption have been levied against elected officials in the past year. In October 2008, the Speaker of the Nigerian House of Representatives resigned after a panel report revealed that allegations of misspending against her were true. Patricia Etteh was alleged to have inappropriately spent US\$ 5 million on refurbishing her own home and that of her deputy, as well as buying 12 cars for the use of House leaders.<sup>236</sup> Numerous former governors have also been accused of massive corruption and money laundering.<sup>237</sup> The Economic and Financial Crimes Commission (EFCC), which was described by the Executive Director of the UN Office on Drugs and Crime as the "most effective anti-corruption agency in Africa", has played a major part in the investigation and charging of numerous former state governors, some of whom have fled the country.<sup>238</sup> As of late January, eight former governors had been charged with corruption since President Yar'Adua took over in May 2007. In one case, former Governor of the oil-rich Delta State, James Ibori, was charged with transferring up to US\$35million of assets abroad despite only earning a salary of US\$25,000 per year.<sup>239</sup> He was also charged with attempting to bribe EFCC officials with US\$15 million to drop charges against him. In the weeks following the charges against Mr. Ibori, Inspector General of Police, Mike Okiro, ordered the Executive Chairman of the EFCC, Mr. Nuhu Ribadu, to attend a nine-month training course at a Nigerian policy institute, effectively forcing him to step down from his post at the EFCC for the time being.<sup>240</sup> This move has been condemned by anti-corruption and human rights groups in Nigeria as blatant and illegal interference in the functioning of the EFCC.<sup>241</sup> Some groups have alleged in a petition to the United Nations that there "is strong evidence that the government would not allow Mr. Ribadu to return to his post after the course".<sup>242</sup> In an ironic twist, two lawyers have moved the courts with the intention to prosecute Mr. Ribadu for charges of corruption around the time of his removal, based on news reports that he owned a mansion in Dubai worth US\$3.9 million. Mr. Ribadu has vehemently denied the charges and alleged that the news reports were untrue.<sup>243</sup>

The media in Nigeria continues to face threats, detention and violence by the government and law enforcement services. According to a May 2007 report by Reporters Without Borders, two journalists went into hiding after a warrant was issued for their arrest by a judge after they alleged that he had accepted bribes from detainees in return for freedom.<sup>244</sup> Another incident was reported a short time later in which a group of 100 supporters of a local politician, Christopher Alao Akala, stormed Broadcasting Corporation of Oyo State (BCOS), a local radio station in Ibadan, with machetes. The attack, which was allegedly linked to the on-air announcement that state elections would go ahead the next day, resulted in equipment being destroyed and at least ten journalists sustaining machete wounds.<sup>245</sup> In June 2007, the Federal Capital Development Agency (FCDA) bulldozed three buildings owned by African Independent Television, a private broadcaster in Abuja, without any prior warning. While the FCDA has claimed that the new buildings contravened city planning rules, international journalists rights groups have alleged that the demolition was linked to the station's critical coverage of the April presidential elections and of Olusegun Obasanjo's tenure as President of Nigeria.<sup>246</sup> During the same month, fifteen armed men stormed a local weekly, Events, and seized around 5000 copies of the newspaper shortly before they went for distribution. The newspaper contained an article, which reported an alleged criminal indictment against Governor Godswill Akpabio.<sup>247</sup> In September 2007, it was reported that a journalist was beaten unconscious by prison guards and police in Ibadan when he tried to take photographs of the aftermath of a prison riot in which 40 inmates were killed.<sup>248</sup> The state comptroller of prisons allegedly said that the press would not be allowed near the site because it was an internal matter and did not concern the press.<sup>249</sup> In October 2007, it was reported that two different state governors responded to media allegations of misspending and corruption against them by arresting journalists and, in one case, laying charges of sedition.<sup>250</sup> A similar case was reported in late January 2008, where a journalist was arrested on libel charges for an upcoming story, which was to expose a suspicious housing deal that had allegedly been made by the governor of the state of Akwa Ibom.<sup>251</sup> 252

Censorship is particularly prevalent in the Niger Delta Region, where oil-related conflict continues to rage on. It is alleged that in order to hide government complicity with rebel activities, and generally to hide the extent of the conflict, security forces have been actively prohibiting lawful foreign journalists, filmmakers and other media personnel from operating within the Niger Delta. Two German filmmakers and an American peace activist, Judith Asuni, along with a Nigerian, Danjuma Saidu, were detained in September 2007 and held for a month in Warri, after being accused of breaching Nigeria's Official Secrets Act by taking photographs and video footage of "protected places", including oil facilities in the region.<sup>253</sup> On 12 April 2008, four American documentary filmmakers and a Nigerian citizen were arrested by the Nigerian military in the delta state.<sup>254</sup>

In July 2008, it was reported that five unidentified corpses, alleged to be of militants from a local paramilitary group, were found floating in a creek in the Niger Delta.<sup>255</sup> Various militant groups have been fighting for supremacy and turf in the oil-rich creeks, and this has led to widespread insecurity and violence. On 25 June 2008, it was reported that a recent escalation in the conflict had resulted in 30 deaths,<sup>256</sup> despite a declaration in the same month, by the "Movement for Emancipation of Niger Delta" (MEND), the main rebel organisation, of a unilateral ceasefire. In the region<sup>257</sup> such widespread and frequent outbreaks of violence have meant that most people in the Niger Delta continue to live in abject poverty and insecurity, without access to basic amenities such as drinking water, food, electricity, adequate housing or sufficient schools and healthcare centres.

After eight years of attempts to pass the Freedom of Information Bill there was a further setback when President Obasanjo refused to sign the Bill into law during his last days in office. The Bill went back to the House of Representatives and in September 2007 the then Speaker of the House pledged that the Bill would be passed speedily.<sup>258</sup> However, when the Bill did reach the House of Representatives on 3 June 2008, it failed for the seventh time during the third reading, amid misplaced fears that the media would gain too much power. The plenary session was also allegedly marred by members vehemently opposing the Bill, without properly considering its merits.<sup>259</sup>

The government's pledge to continue to strengthen the National Human Rights Commission suffered a major setback in 2006 when the Executive Secretary, Mr. Bukhari Bello, was removed without explanation after expressing criticism of the government. A lack of clarification about the circumstances surrounding his removal has resulted in the non-renewal of the membership of the National Human Rights Commission of Nigeria of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights<sup>260</sup>

The implementation of Islamic law (based on the sharia) in many northern Nigerian states has provoked a great deal of controversy. The Nigerian Constitution provides that the Sharia law may be applied to criminal offences only if the National Assembly and the State House of Assembly enact the Sharia offence and punishment. The unconstitutional implementation of the sharia law has reportedly seen Sharia courts prescribe corporal punishments, such as limb amputation, and the application of discriminatory standards against women in relation to the rules of evidence in adultery cases. It has been reported that approximately six women have been sentenced to death by stoning for adultery in the past seven years, after their pregnancies were used as evidence against them, though none have been executed.<sup>261</sup> On 15 February 2008, it was reported that six people convicted by Sharia courts are awaiting death by stoning, while 46 others are waiting for amputation in the northern state of Bauchi alone.<sup>262</sup>

There is no voters' register, yet elections and by-elections have continued. There is no proper redress for voters whose rights to determine representation have been violated.

### 3.2. Compliance with the Pledge

Despite Nigeria's pledge to promote human rights within its borders and protect the human rights of all its citizens a number of violations such as torture arbitrary detention, police abuse, inadequate prison conditions, inadequate right to information, lack of media freedom, inappropriate implementation of

Sharia laws, violence against women and rampant corruption, have in the past year continued with little hindrance. Furthermore, these violations have also been contrary to Nigeria's international human rights commitments under international treaties such as the ICCPR, CAT and CEDAW.

Nigeria also pledged to comply with reporting requirements to treaty bodies, yet it still has reports pending before four treaty bodies. While Nigeria promised to cooperate fully with Special Procedures and to assist in strengthening the Council, at Council sessions Nigeria instead advocated constraining the Special Procedure mechanism of the Council by the application of a Code of Conduct.

In its pre-election pledge to the Council Nigeria had made a commitment to strengthen its National Human Rights Commission, however, the Commission is yet to be completely free of executive interference. Moreover, other independent bodies such as the EFCC seem to be on a similar path towards executive interference.

# 1. Background

# 1.1. Context

Whilst Marital Law was not declared, Pakistan was under military rule from October 1999 to November 2007, when General Pervez Musharraf seized power from Nawaz Sharif. Following the military coup, the country was suspended from the Council of the Commonwealth. In 2002, the General legitimised his coup and attained his objective of remaining at the Presidency for another five years, through a carefully worded referendum. He then consolidated his power by forcing an amendment to the Constitution in 2003, that fixed rules for future elections and gave him the power to dismiss the National Assembly. Parliamentary elections were held in 2002 and local elections in 2005. International observers declared that neither set of elections were free or fair. In October 2004, the President pushed for the adoption of a new bill authorising him to remain the Chief of Army Staff. In the same year, Pakistan was readmitted to the Commonwealth in recognition of the moves being taken towards democracy, although the government risked renewed suspension if the President remained Chief of Army Staff. The President promised that democratic general elections would be held by the end of 2007. He himself was re-elected to a new term in October 2007, through questionable election processes. Amid protests over his retaining his position as Chief of Army Staff, he resigned from that post before the start of his new term, handing over command on 28 November 2007. The elections promised for the end of 2007 eventually took place in February 2008. On 18 August 2008, Musharraf resigned as President after being threatened with impeachment. His replacement, elected on 6 September 2008, was Asif Ali Zardari.

### **1.2 UN Treaties**

Pakistan is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol and the Convention on the Rights of the Child (CRC). It has signed the two Optional Protocols of CRC and has also signed the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).

Pakistan is not a party to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention for the Protection of All Persons from Enforced Disappearance (CED), the Convention on the Rights of Persons with Disabilities (CPD), or the Convention on the Protection of the Rights of All Migrants Workers (CMW).

# **1.3 UN Reporting History**

Pakistan has completed some reporting requirements due under international treaties, but has largely failed to satisfy its reporting requirements.

Pakistan has failed to submit two reports under CRC in 2007. The country has completed 14 rounds of reporting under CERD, although it has failed to submit reports for 2000, 2002, 2004 and 2006. It has completed its reporting requirements under CEDAW.

Pakistan has not extended an open invitation to the Special Procedures of the UN Human Rights Council.

# 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, Pakistan supported a statement to eliminate country specific mandates. However, it stated that Occupied Palestinian Territories is not a country mandate, but a thematic mandate, which should be ongoing until the end of the occupation. At the Fifth Session of the Council, Pakistan, on behalf of the Organisation of the Islamic Conference (OIC) stressed the importance of equality in the UPR. Because of the cooperative nature of the process, states can only be held to account for what they have promised. Pakistan insisted that the UPR outcome must be adopted by consensus and with the consent of the concerned state. Pakistan highlighted its support for the Code of Conduct, stating that it will be valuable to both mandate holders and countries.

At the Sixth Session of the Council, Pakistan promised to help with the setting up of a voluntary trust fund to facilitate the participation of developing countries in the UPR process. It had also requested that the non-paper on technical and objective requirements for eligible candidates for mandate holders be less prescriptive and impose fewer requirements on eligible candidates. Pakistan described the UPR mechanism as complicated and complex. It was unwilling to support the proposed mechanism in its then draft form.

On 14 September 2007, Pakistan (OIC) also said that it would like all resolutions renewing a Special Procedures mandate to affirm clearly that mandate holders must exercise the mandate functions in accordance with the Code of Conduct for Special Procedures mandate holders. On 27 September 2007, Pakistan (OIC) pushed the view that the level of development and the cultural and religious specificities of countries had to be taken into account.

At the Sixth Session of the Council, on 14 September 2007, Pakistan (OIC) claimed that there is a need to fill the "juridical vacuum" in addressing the issue of religious intolerance and suggested that the Council, in conjunction with OHCHR, should look at the possibility of drafting a "convention to combat defamation of religions and to promote religious intolerance". Pakistan (on behalf of the OIC) spoke about the importance of the mandate of the Special Rapporteur on Freedom of Religion and Belief and emphasised its increasing importance since the terrorist attacks of 11 September 2001.

On 25 September 2007, Pakistan expressed its commitment to the implementation of the Durban Declaration and Programme of Action (DDPA) and added that the Durban Review Conference should assess the implementation of the DDPA but should also address contemporary and emerging forms of racism, racial discrimination and related intolerance.

On 28 September 2007, Pakistan (OIC) noted its strong support for the resolution on the Elaboration of International Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination. It expressed concern over the misuse of the right to freedom of expression to incite racial and religious hatred and intolerance.

At the Sixth Session of the Council, on 17 September 2007, Pakistan (OIC) called for the end of coercive measures, particularly against OIC States.

At the Sixth Session of the Council, on 17 September 2007, Pakistan spoke of the right to self-determination as an established "and most fundamental collective human right of peoples", as enshrined in the UN Charter and the international covenants. It stated that "the people of Jammu and Kashmir have yet to assert that right" and that the human rights situation continues to be serious, with incidents of extrajudicial killings and torture.

At the Sixth Session of the Council, on 20 September 2007, Pakistan (OIC) supported the establishment of a gender unit within OHCHR and encouraged the Secretariat to continue its efforts. On 14 December 2007, it noted that the resolution "integrating the human rights of women throughout the United Nations system" would give the gender unit of OHCHR clear guidance for its work.

At the Sixth Session of the Council, on 20 September 2007, Pakistan was critical of the idea of a minority issues forum, pointing out that the mandate of the Independent Expert had yet to be reviewed and it would be more appropriate to wait for the review to be completed. On 26 September 2007, Pakistan supported the renewal of the mandate on the right to food.

At the Sixth Session of the Council, on 10 December 2007, Pakistan was of the view that significant consultations on important parts of the Optional Protocol to ICESCR were still required. It was of the view that the responsibility for the rectification of the legal status of the Committee on Economic, Social and Cultural Rights was with the state parties to the Covenant. More specifically, this would require the calling of a conference of states party to the Covenant, according to the amendment procedure provided for by the Covenant itself.

At the Sixth Session of the Council, on 11 December 2007, regarding Pakistan, Louise Arbour the then UN High Commissioner for Human Rights, welcomed the release of detainees, in particular that of the Special Rapporteur on Freedom of Religion or Belief, Ms Asma Jahangir. She also welcomed the fact that the Special Representative of the Secretary-General on human rights defenders, Ms Hina Jilani, was able to return freely to Pakistan. She also welcomed President Musharraf's stated commitment to lifting the State of Emergency and holding free elections in 2008. However, Ms Arbour expressed her concern about "the long-term injury" inflicted on the judiciary in Pakistan as a result of Emergency rule.

At the Sixth Session of the Council, on 12 December 2007, Pakistan voiced clear opposition to the idea of an International Commission of Inquiry in Darfur as recommended by the Special Rapporteur in his report.

At the Sixth Session of the Council, on 14 December 2007, Pakistan (OIC) tabled a number of amendments to the European draft on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. However, the OIC decided not to pursue action on its amendments, and therefore only the European draft resolution had to be decided on. A number of States regretted that the EU was not ready to incorporate the amendments proposed by the OIC. Pakistan (OIC) gave an extensive explanation of its stance before the vote. It said that while the OIC opposes all forms of intolerance or discrimination based on religion or belief, and was always supportive of the mandate of the Special Rapporteur, it could not agree to the draft. The EU draft explicitly urges states to guarantee the right to change one's religion or belief, a requirement to which the OIC could not subscribe. Pakistan abstained.

# 2. Pledge

# 2.1. Context to Election to the Council

Pakistan was one of 18 Asian candidates that contested the May 2006 election at the Council for the 13 seats reserved for Asia. Pakistan came sixth in the Asian group with 149 votes. Thailand, Kyrgyzstan, Lebanon, Iran and Iraq were unsuccessful in securing a seat. Pakistan's tenure was for two years and it sought re-election in May 2008. There were four vacancies reserved for the Asian group and Pakistan was re-elected with114 votes, the third highest number of votes. Sri Lanka and Timor Leste were the two Asian states that lost the elections.

# 2.2. Pledge Made

In its pre-election pledge Pakistan committed itself to supporting the universal ratification of core human rights treaties and to working towards an early ratification of ICCPR, ICESR and CAT. The country committed itself to active participation in the UN Human Rights Council and to providing assistance in the implementation of its mandate. Pakistan also stressed that its contribution to the promotion of human rights includes the protection of women's and religious minorities' rights as well as the promotion of human dignity, fundamental freedoms and human rights. It also pledged to establish an independent national human rights institution and promised to introduce a human rights curriculum in its educational system. Finally, Pakistan indicated that it has greatly contributed to the promotion of human rights nationally.

# 3. Compliance

### 3.1. Human Rights Over the Past Year

In the past year the human rights situation in Pakistan was as tumultuous as its volatile political climate. For most of the year, under President Musharraf, the human rights situation grew worse. The elected government that came to power following elections held on 18 February 2008, was initially able to arrest the worsening human rights situation, but little progress has been seen in terms of reversing the damage done previously. Under President Musharraf, civil and political rights remained under severe threat whilst disappearances continued and the state openly subverted democratic structures including the Constitution and the judiciary.

Under Musharraf, the Constitution of the country was subordinated to Presidential Orders and undemocratically amended. It was suspended through Emergency measures and subjected to extensive executive interference. Examples of this include the 3 November 2007 Proclamation of Emergency that suspended the Constitution and fundamental constitutional rights, the Provisional Constitutional Order No.1, 3 November 2007, the Constitution (Amendment) Order, 21 November 2007 and the Constitution (Second Amendment) Order, 14 December 2007. All Orders passed during the November 2007 Emergency were legitimised, their validity extended beyond the period of Emergency and made immune from scrutiny by the Revocation of Proclamation of Emergency Order, 15 December 2007.

The gross subversion of the Constitution and the crippling of the judiciary within a time period spanning a little over one month (3 November 2007 to 15 December 2007) was alarming and sets a dangerous precedent. This was a dangerous step towards the institutionalisation of impunity in the domestic political culture of the country.

In the past year, under President Musharraf, the judiciary has been a major target for the executive. In 2006 and 2007 the Pakistani judiciary took an active interest in scrutinising the increasing numbers of complaints regarding enforced disappearances in Pakistan. The judiciary faced reprisals for this in March 2007, when the President declared the Chief Justice of Pakistan "non-functional".<sup>263</sup> On 20 July 2007, the Supreme Court of Pakistan reinstated the Chief Justice and set aside this Presidential Order as illegal. On 3 November 2007, just as a Supreme Court verdict on the President's re-election was due, the President in his capacity as the Army Chief suspended the Constitution and declared a State of Emergency. The move was widely seen as a Presidential ploy to pre-empt any negative decision of the Supreme Court of Pakistan. Following this the President passed a number of Presidential Orders and Ordinances (Provisional Constitutional Order No.1, 3 November 2007, the Constitution (Amendment) Order, 21 November 2007 and the Constitution (Second Amendment) Order, 14 December 2007 and the Oath of Office (Judges) Order, 3 November 2007) specifically designed to sabotage the judiciary.

During the period of Emergency, while the Constitution was being amended, Presidential Orders ensured that all serving judges in superior courts (the Supreme Court, the Federal Shariat Court and the High Court) were removed. The Executive thereafter handpicked out of those so removed a set of judges who would pledge to subordinate the role of the judiciary vis-a-vis the executive. The removed judges included the Chief Justice and 12 other judges of the Supreme Court (total strength 17), and the Chief Justices of Sindh and Peshawar High Courts.

During the elections held on 18 February 2008, the two main parties in the new coalition government, the Pakistan Muslim League-N and the Pakistan Peoples Party (PML-N and PPP), ran with promises to restore the judges dismissed by President Musharraf. However, the coalition collapsed over differences regarding the delay in reinstating the judges, as well as disagreements about how far the powers of the judiciary should be limited. Nawaz Sharif and his PML-N have left the government, demanding that the judges be reinstated and the Supreme Court restored to its full powers, whereas Asif Zardari of the PPP, whilst wanting to reinstate the judges, has called for limits on their powers. Personal interest played a role

in their respective positions. If reinstated, the old judges were set to rule over the controversial amnesty given to Mr. Zardari and the late Benezir Bhutto by the new court sympathetic to Musharraf, but if the reinstatement was to be delayed, the new judges were set to rule against Sharif's eligibility to run for Parliament due to corruption charges pressed in 1999. Sharif quit the coalition government in May 2008 over this row,<sup>264</sup> and despite being cleared by the Election Commission of Pakistan to run for by-elections in early June, the Supreme Court has stepped in and declared him ineligible.<sup>265</sup> On 18 August 2008, under political pressure and facing the threat of impeachment, President Musharraf resigned.<sup>266</sup> On 9 September 2008, Mr. Zardari was sworn in as President after winning an election that followed President Musharraf's resignation.<sup>267</sup>

Since the elections, most judges have been restored or promoted to the Supreme Court after taking a fresh oath (considered unnecessary by lawyers). However, the deposed Chief Justice refused to take a new oath and the movement for his restoration continues.

Civil society freedom and media freedom have been contentious issues in Pakistan. Those who expressed political dissent were repeatedly targeted throughout the year. Lawyers peacefully protesting the subversion of the judiciary were frequently subjected to violence by security forces. Security forces also attacked a number of other peaceful protests. Ahead of the 18 February 2008 elections, several Presidential Orders and Ordinances resulted in the arrest of hundreds of political leaders and human rights activists who had expressed dissent. A prominent member of Pakistani civil society, Asma Jahangir, UN Special Rapporteur on Religious Freedom and the Chairperson of the Human Rights Commission of Pakistan, was kept under house arrest for around two weeks for expressing dissent. On 4 November 2007, the offices of the Human Rights Commission of Pakistan were raided by security forces and 55 people attending a meeting were detained. Freedom of the media in Pakistan was curbed. Media houses covering executive interference with the judiciary were attacked. On 3 November 2007, following the proclamation of Emergency all television channels (including foreign channels) other than government channels were taken off air. Most channels were allowed to resume cable telecasts later, but under strict conditions. Geo T.V., a private television company, was however allowed to resume telecasts although only after 77 days. Electronic media that was previously regulated by an Ordinance of 2000 was placed under further arbitrary restrictions by Ordinance No. LXV of 3 November 2007. Newly inserted Clauses 20 (k)<sup>268</sup> and 20 (m)<sup>269</sup> are examples of wide restrictions in the Ordinance subject to arbitrary usage; such restrictions grant the executive wide discretionary powers to restrict media freedom. Similar restrictions have been added to the Press, Newspapers, News Agencies Ordinance [Date] that regulates the print media. Prior to elections a ban on live coverage of "incidents of violence" was in place.

Alleged enforced disappearances by security forces continued to be a major problem in Pakistan. After sabotaging the Supreme Court's enquiry into the matter the government effectively shut down all attempts to investigate such disappearances. Security forces in Pakistan had their powers extended during the 3 November 2007 emergency. The Pakistan Army (Amendment) Ordinance, 10 November 2007, allows the army to try civilians retrospectively from 2003 onwards. It has been feared that this greatly strengthens the powers of the country's allegedly abusive intelligence forces, which have been known to have played a large part in the enforced disappearance of countless Pakistani citizens. In addition to this, it must be noted that retroactive trial of civilians by the military violates the essential basics of established norms of criminal justice and international humanitarian law. Following the18 February 2008 elections and the lifting of Emergency provisions the situation mellowed, but the army and the intelligence have been accused of playing a political game and continuing to operate independently of the control of the elected government.<sup>270</sup>

Furthermore, it was reported that security forces had set up arbitrary detention camps where widespread use of torture with impunity was found. The Asian Human Rights Commission (AHRC) has documented the existence of at least 52 such centres, wherein scores of missing people were tortured by Military Intelligence (MI), Inter-Services Intelligence (ISI), the Federal Intelligence Agency (FIA), the Pakistan Rangers and the Frontier Constabulary (FC) in order to elicit confessions of their involvement in terrorism and sabotage activities.<sup>271</sup> One example was the case of Mr. Abdul Wahab Baloch, a peace activist and

Baloch nationalist, who was arrested on 28 May 2008, during a peaceful demonstration at Karachi Press Club and severely tortured at several secret locations before being released on 3 June 2008.<sup>272</sup> It has also been alleged that during the first quarter of 2008, 39 documented cases of enforced disappearances by state security forces occurred.<sup>273</sup> Pakistan signed the Convention Against Torture (CAT) and the International Convention on Civil and Political Rights (ICESCR) on 17 April 2008. However, as yet, no efforts have been made to define torture properly, or to create safeguards in domestic law to prevent the widespread use of torture on persons under detention.<sup>274</sup>

Intense battles by the army and air force against militants in the northern tribal areas of the country, especially in the North-West Frontier Province (NWFP), are known to have caused massive displacement and civilian loss of life. In order to improve the security situation and reduce the strain on resources, the Pakistan government, contrary to the advice of the UNHCR, has decided to repatriate approximately 2.4 million Afghan refugees by the end of 2009.<sup>275</sup> This situation is aggravated by the fact that security services in Pakistan have no effective oversight mechanisms and legal and institutional reform is much needed within police and military structures. Furthermore, especially in the NWFP, violence continues with reprisals for government action felt through suicide attacks all over the country. On 11 March 2008, twin suicide attacks struck Lahore, normally considered a respite of calm compared to other parts of the country, killing 24 and wounding 170 people.<sup>276</sup> In order to tackle the problem, the new government initially made deals with fundamentalist groups operating from NWFP, including prisoner exchanges, promises to withdraw security forces from the region, and ceasefires. In return, these groups promised to not conduct suicide attacks, and also pledged not to hamper girls from seeking education.<sup>277</sup> Concerns have been raised regarding the perpetuation of a climate of impunity for various critical violations in the region as militants are freed.<sup>278</sup> Reports also indicated that following the initial deal with the government, militants actively set up religious courts that practice a form of justice that is not human rights friendly.<sup>279</sup> Currently, people of the tribal areas as well as some parts of the Frontier province continue to suffer violation of human rights by both the security forces and the militants.

The outcome of the February 2008 elections held in Pakistan has been hailed as free and fair and as reflecting the will of the people. However, in the run up to the election several flaws in the system governing elections in Pakistan came to light. These flaws are important and need correction. The Election Commission of Pakistan (ECP) is headed by a former judge of the Supreme Court who is appointed at the discretion of the President and assisted by four sitting judges of the Provincial High Courts. Judges act as election officers in every constituency. Given the November 2007 subordination of the judiciary to the executive during the 18 February 2008 elections the electoral structure in Pakistan potentially threatened the neutrality of the election. This was amplified at the time given the violence and state repression of dissent that surrounded the elections. Prior to the elections, the UN Special Rapporteur on Human Rights, Hina Jilani, even commented that there would be no need for international monitoring of the elections as restrictions in place during the Emergency, and "pre-poll rigging" by President Musharraf had already damaged the credibility of the elections.<sup>280</sup>

The ECP has faced increased pressure, both internationally and domestically, to conduct reforms so as to make elections more independent and impartial, as well as to harness technological innovation to ensure that rigging does not occur. In June 2008, the ECP set up the Commission of Electoral Reform to investigate various suggestions and proposals designed to improve the functioning of the ECP. At the end of June, following recommendations by the Commission, the ECP decided to appoint a new Chief Election Commissioner from a list of nominations provided by the parties in opposition. Other reforms, largely of a technical nature, included providing computerised IDs to improve the accuracy of voter lists, the introduction of electronic voting machines, timely provision of information through an updated website and so on.<sup>281</sup>

Pakistan has still failed to create a National Human Rights Commission. A Bill to create such a commission was tabled at the National Assembly two years ago, but progress on this Bill is yet to be seen.

Violence against women has been a critical and endemic problem in Pakistan. According to estimates by various NGOs, approximately 70 to 90 per cent of women in Pakistan experience domestic violence.<sup>282</sup> Methods of abuse include acid attacks, facial mutilation, beatings, and in some cases burnings or explosions. It has been claimed that at least four incidents where women are seriously burnt occur weekly in Pakistan.<sup>283</sup> Furthermore, traditional harmful practices such as karo kari (honour killings), jirga (settlement of dispute through rape of female member) and vani (dispute settlement through marriage) continue to take place. In 2007, HRCP reported 4276 cases of abuses of women's rights, including 731 cases of rape and gang rape (in 258 cases the victim was a minor), 636 cases of honour killings and karo kari (of which 61 were minors), 736 abductions, 143 burnings (31 minors), and 692 suicides leading from domestic violence and social pressures.<sup>284</sup> When quantified, the average number of serious violations against women took place at a rate of 12 per day in the year 2007. Therefore, violence against women needs to be checked with urgency, through effective implementation and design of government policies and initiatives to protect women's rights and security. Furthermore, current laws designed to protect women need to be upgraded to provide better protection. For instance, the Hudood Ordinances of 1979, which require rape victims to produce four male witnesses to corroborate allegations, or risk facing imprisonment due to adultery (zina), continues to remain in place, and although President Musharraf tried to reform it in 2006 with his Protection of Women Bill, his reforms failed as a result of widespread opposition from Islamist parties who wished to ensure that rape was not placed in the ambit of the country's secular penal code.<sup>285</sup> Since 2006, no progress has been made either with government initiatives, or more generally towards providing better safeguards for women's rights.

Protection of religious minorities remains a contentious issue in Pakistan. On 8 April 2008, it was reported that a young Hindu labourer was lynched in public and killed, in the presence of more than two dozen police officers, for allegedly being in love with a Muslim girl.<sup>286</sup> Religious minorities are increasingly at risk given the recent growth of intolerance and the Talibanisation of the NWFP. Taliban-style 'Vice and Virtue' squads roamed the streets, took over public administrative buildings, banned girls from entering schools, bombed CD and video shops and established parallel justice systems in mosques and madrassas.<sup>287</sup> The height of the crisis was a siege on the Lal Masjid in the capital, where Deobandi extremists set up a parallel court inside a mosque, and carried out kidnappings, arson and murder. Pakistani security forces stormed the mosque after a week-long siege and breakdown of negotiations, leaving 154 people dead, and at least 50 militants captured.<sup>288</sup>

Sectarian violence, especially against the Shia community continued to rise at alarming rates, especially in the towns of Peshawar, Hangu and Parachinar. For instance, in April 2007 alone, 40 people died as a result of gun battles that followed incidents of shouting blasphemies near mosques.<sup>289</sup> The Ahmadi community also continues to face discrimination by the state, and society in general. According to the annual report of the community, five Ahmadis were killed and 36 face charges on faith-related cases. It was also reported that state discrimination against the community has meant that they did not participate in the electoral process, as the Election Commission promulgated special procedures (they were made to fill out a separate electoral form), which they refused to accept. In September 2008, three Ahmadis were killed in Sindh following a religious TV talk show in which the host and a guest sanctioned the killing of people of this sect (declared non-Muslims in 1974).

# 3.2 Compliance with the Pledge

In its pre-election pledge Pakistan indicated that it has greatly contributed to the promotion of human rights internationally. Pakistan also committed itself to active participation in the UN Human Rights Council and to assisting in the implementation of its mandate. Despite this, at the UN Human Rights Council, Pakistan opposed country-specific mandates and supported their elimination, supported a Code of Conduct to constrict the Council's Special Procedures, promoted a softer version of the Universal Period Review mechanism (when the draft proposal was in discussion) and opposed the formation of a Commission of Inquiry into Darfur.

In its pre-election pledge Pakistan committed itself to supporting the achievement of the universal ratification of core human rights treaties and to working towards an early ratification of ICCPR, ICESR and CAT. Following this in April 2008, Pakistan took the positive step of ratifying ICESCR and signing on to ICCPR and CAT. However, it is yet to ratify ICCPR and CAT. In its pledge, Pakistan also indicated that it has greatly contributed to the promotion of human rights nationally. It further stressed that its contribution to human rights includes the protection of women's and religious minorities' rights, as well as the promotion of human rights. In spite of this, human rights and fundamental freedoms were severely compromised by serious institutional failures. Minorities and women still live in a dire state.

Pakistan promised to establish an independent national human rights institution, but no progress has been made on this promise.

# 1. Background

# 1.1 Context

South Africa opened up to democracy in 1994, after 46 years of an ethnic-based segregation policy known as Apartheid. Under apartheid, a minority white government ruled the country and imposed a strict and brutal racial segregation and discriminatory policy. Since 1994, South Africa has successfully undertaken two free and fair elections and has made huge strides towards ensuring equality and equal representation for all. South Africa's achievements in the past 13 years, includes one of the most progressive modern constitutions, with a bill of rights, and a multicultural environment. Last year, South Africa also became one of the first countries from the global South to accept same sex civil union. Despite these achievements, South Africa still has many human rights issues that need to be addressed, most of them still linked to the legacy of Apartheid.

# **1.2 UN Treaties**

South Africa is a party to the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention on the Rights of the Child (CRC) and its two Optional Protocols, the Convention on the Rights of Persons with Disabilities (CPD), and its Optional Protocol, the Convention Against Torture (CAT) and the country has signed its Optional Protocol.

South Africa is not a party to the Convention on the Protection of the Rights of All Migrants Workers (CMW) or the Convention for the Protection of All Persons from Enforced Disappearance (CED).

# **1.3 UN Reporting History**

South Africa has completed some of its reporting obligations due under international treaties, but has failed to satisfy all its reporting requirements.

Under ICCPR South Africa has not completed any rounds of reporting and one report has been overdue since 2000. The country has completed one round of reporting under CEDAW, but owes its 2001 and 2005 reports. The country has completed one round of reports under CRC, but one report has been overdue since 2002. Under the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Pornography, South Africa has not completed any reporting. South Africa has no reports due under CERD or CAT.127

South Africa has extended an open invitation to the Council's Special Procedures.

# 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, on 12 June 2007, South Africa supported a statement to eliminate country-specific mandates, because they played a "substantial role in politicising the Council". South Africa supported the idea that "the Universal Periodic Review will be a more fair, legitimate, effective, and impartial instrument able to facilitate cooperation and dialogue and avoid confrontation". At the Sixth Session of the Council, on 10 September 2007, South Africa was against a sentence of the non-paper on the technical and objective requirements for the submission of candidatures to the Advisory Committee, that "Governments should verify the integrity of their candidates prior to the submission of their candidatures". It thought that official government "verification" would impinge upon the principle of independence.

On 19 September 2007, South Africa suggested a new operative paragraph on the draft resolution on religious intolerance on the duty of the mandate holder to carry out the activities of the mandate fully respecting the Code of Conduct.

At the Sixth Session of the Council, on 25 September 2007, South Africa expressed its hope that the review conference would assess the implementation of the DDPA and identify mechanisms for further implementation, but also address contemporary and emerging forms of racism, racial discrimination and related intolerance.

At the Sixth Session of the Council, on 10 December 2007, South Africa had taken the initiative to rectify the legal status of the Committee on Economic, Social and Cultural Rights. In its view, only by putting the Committee on Economic, Social and Cultural Rights on the same footing as the other treaty bodies could the principle that all human rights are universal, indivisible, interdependent and interrelated be secured. South Africa highlighted that a rectification would indeed prevent the erroneous assumption that the Committee on Economic, Social and Cultural Rights has an inferior status to other committees.

On 12 December 2007, South Africa was very pleased to note that the Special Rapporteur commended the full and non-monitored access during his visit to immigration detention facilities at Johannesburg Airport, despite not having access to some police detention facilities.

At the Sixth Session of the Council, on 14 December 2007, South Africa expressed its "serious concern" with regard to a number of paragraphs of the resolution integrating the human rights of women throughout the United Nations system that it believed sought to give the Council mandate and powers that it does not possess and to undermine the mandate of other bodies. South Africa stated that if a vote were called on the resolution, it would vote against.

At the Sixth Session of the Council, South Africa announced its abstention on the draft on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief proposed by EU.

# 2. Pledge

### 2.1 Context to Election to the Council

South Africa was one of 13 African countries that contested the May 2006 elections to the Council. The number of candidates was the same as the number of seats reserved for Africa. The results of the election were predetermined. In the election, South Africa came fourth in the African group with 179 votes. South Africa's tenure was for one year and in May 2007 was re-elected to the Council. There were four vacancies for African states and South Africa was re-elected with 175, votes the highest after Madagascar (which won 182 votes). Tunisia and Morocco lost the election for the four African seats.

# 2.2 Pledge Made

In its pre-election pledge South Africa committed to protect the international human rights agenda and to submit any reports due to treaty bodies. It pledged to work for the right to development to be inscribed within the framework of ICCPR and ICESCR. South Africa pledged to advocate for balanced and sustainable development within a human rights framework. When introducing its pledge, South Africa highlighted that its Constitution guarantees human rights and fundamental freedoms.

# 3. Compliance

### 3.1 Human Rights in the Past Year

While South Africa has one of the most progressive constitutions in the region, and a democratic political system with peace and stability as one of its hallmarks, there are still many human rights challenges facing the country today. Some of these critical issues have threatened to tarnish South Africa's reputation as a regional power that protects human rights. These include the widespread xenophobia towards foreign migrants; race-related discrimination and violence; discrimination and violence against women; protection of the rights of minorities; violent crime in urban areas; police brutality and impunity; lack of adequate housing; and the critical nature of the HIV/AIDS epidemic and access to medicines.

South Africa is facing an ever-increasing number of migrants and asylum seekers entering its territory from Zimbabwe and other African states.<sup>290</sup> There is strong evidence that asylum-seekers and refugees face xenophobia, threats and violence, resulting in deaths and forced evictions.<sup>291</sup>

On 1 July 2007, a group of Somali migrants were attacked and set alight. A representative of the Somali Association of South Africa said that the attack was just one of a hundred such attacks in the past ten years against Somalis in South Africa.<sup>292</sup> However, the most serious manifestation of race-related violence against migrants and xenophobia occurred during May and early June 2008. What started as an isolated incident on 12 May 2008 in the South African township of Alexandra, north east of Johannesburg, spread throughout the country, with violence being reported as far as Durban and Cape Town and in all of the Gauteng Province. By the end of May 2008, 56 people had been killed,<sup>293</sup> over 650 people injured, and the violence has spread throughout South Africa, namely throughout Gauteng Province, Durban and Cape Town. Armed mobs targeting foreign immigrants from Mozambigue, Malawi, Zimbabwe, Nigeria, Somalia, Congo and even Pakistan reportedly looted shops, burned down shacks, attacked migrant-owned establishments and burnt foreigners alive during the ensuing crisis. Approximately 80,000 to 100,000 people were displaced resulting in the repatriation of a huge number of immigrants to Malawi, Mozambique and Zimbabwe. Zimbabweans who feared going home were reported to have crossed into Zambia.<sup>294</sup> Those that could not leave were packed into crammed refugee camps, most provided inadequate facilities for water, food and sanitation. The army was deployed on the streets to restore order for the first time since apartheid ended. This crisis not only exposed the endemic problems of xenophobia and crime, but also highlighted the inadequate and unprepared nature of the government response. Issues that have come to the fore include racial discrimination, organised race-related violence,<sup>295</sup> and resentment towards migrants due to poverty and unemployment. In a recent development, the South African High Court ordered that South Africa's 200,000 strong ethnic Chinese population should be reclassified as "blacks" so as to be able to avail benefits provided by the Economic Empowerment and Employment Equity Act.<sup>296</sup>

The state response in dealing with the large influx of migrants has been inadequate on a number of levels, even before the crisis began, according to refugee and migrant rights organisations in the country. For example, in June 2007, the International Organisation for Migration estimated that South Africa was deporting 3,900 illegal Zimbabwean immigrants each week. Human Rights Watch alleges that one refugee repatriation centre is repatriating Zimbabwean asylum seekers without first screening for refugee status.<sup>297</sup> These allegations have been confirmed by a report published by the Musina Legal Advice Office, which claims that according to first hand research at Beitbridge border post, most refugees claiming political asylum are sent back without investigation due to spurious knowledge of refugee laws and protocol, and the flawed notion that "all Zimbabweans are economic refugees". Migrants themselves are aware of this disregard for protocol. It is also reported that claims by the Home Affairs Department that most applications for asylum are illegitimate are not backed by statistics which show that between 1 January and 30 June 2007, only one Zimbabwean claimed asylum.<sup>298</sup> According to Refugee International approximately 35 per cent of those deported, simply cross the border immediately. The deportations reportedly do little to deter migrants and end up incurring great cost to the government.<sup>299</sup> Asylum

seekers, illegal immigrants and refugees face difficult conditions in squatter settlements and repatriation centres. In October 2007, a group of MPs made an unannounced visit to a refugee office in Cape Town and found a refugee being held in a cage inside a filthy toilet. The MPs called the office "chaotic" and described "inhumane treatment of refugees by the department's officials". An April 2007 report by the Department of Home Affairs reportedly found that there was a backlog of 30,000 to 48,000 applications for refugee status in the system, not including 50,000 who had visited one of the country's five reception centres already, but who were awaiting their initial appointment to receive their asylum seeker permit to legalise their stay in South Africa.<sup>300</sup> An impromptu visit by MPs in August 2007, to another refugee reception centre in Gauteng, yielded similar impressions. The centre was described as "filthy" and "inhumane" and a "massive crisis". The report alleged that women were raped in the vicinity every night, and that some people had been sleeping outside the centre for months hoping to get documents. The centre's director said that approximately 1000 people streamed into the office every day, but that they were only a staff of 15 and had unreliable equipment to process claims. Their calls for help from the central Home Affairs department had not yet yielded any assistance.<sup>301</sup>

On 30 January 2008, armed police raided a church in Johannesburg that had been housing mostly Zimbabwean asylum seekers and arrested them. Conflicting reports claim 1500<sup>302</sup> or 500<sup>303</sup> people were detained by police. The police claimed to be searching for drugs and said that the church was not specifically targeted because it was a haven for asylum seekers. The Methodist bishop in charge of the church alleged that the people in custody were being mistreated and some had been beaten by police. The Legal Resources Centre (LRC) claimed that the detainees were initially denied lawyers and that many were wrongly due to appear in court for immigration-related charges. Police reportedly refused to retrieve immigration papers from the church. A representative of LRC also said that Home Affairs was failing to provide proper documentation to asylum-seekers and therefore many of them could not prove that they were in the country legally.<sup>304</sup>

Before the crisis erupted in May 2008, the government had refused to acknowledge that the large influx of Zimbabwean migrants was posing a serious problem, especially to maintain law and order in fragile "townships" of outlying urban areas. Part of the problem can be traced to allegations that President Thabo Mbeki is partial towards President Mugabe's government in Zimbabwe, after he made comments stating that there was "no crisis" in Zimbabwe on his way to preside over an emergency meeting of the Southern African Development Community (SADC) to mediate between President Mugabe and Opposition Leader Morgan Tsangavarai on 12 April 2008.<sup>305</sup> Just 10 days later, civil society groups in South Africa had to intervene to prevent a Chinese ship allegedly laden with a shipment of small arms ammunition, mortar rounds and rocket-propelled grenades meant for Zimbabwe from docking in Durban. The South African government did nothing to prevent the ship from docking. It was feared that the shipment was meant to boost post-election violence in Zimbabwe where the ZANU-PF narrowly lost the elections to MDC on 29 March 2008. According to reports the "ship of shame", as it was dubbed by the local media, had tried to dock in Luanda, Angola and Beria in Mozambique, but was denied permission by the two countries.<sup>306</sup>

Violence against women remains high in South Africa. One media report characterises the country as "the rape capital of the world".<sup>307</sup> According to a representative of the South African Human Rights Commission, the country's schools are a particularly dangerous place for teenage girls, who regularly face harassment and sexual assault at the hands of teachers and male students. Examples of girls being forced to have sex to reconcile being tardy were given to explain the depth of the issue, which the representative felt was a symptom of a "deeper unspoken systemic problem".<sup>308</sup> The South African government has made some efforts to curb sexual violence, with the passing of the Sexual Offences Amendment Act. The law has been praised for expanding the definition of rape to include all forms of non-consensual penetration regardless of gender, and a number of other progressive clauses.<sup>309</sup> However, many aspects of this Act were also criticised by civil society groups, especially clauses that stipulated that for victims to qualify for post-exposure prophylactics (PEP) treatment, and have access to anti-retroviral drugs (ARVs) at clinics, they would have to first press criminal charges against the accused.<sup>310</sup> Furthermore, the criminalisation of "consensual sexual violations" place liability on children between 12 and 15 years
to be prosecuted for inter alia "direct or indirect contact [...] between the mouth of one person [...] and the mouth of another person".<sup>311</sup> In spite of these criticisms, the Act was approved by the National Council of Provinces in November 2007,<sup>312</sup> and has been in force since 31 December 2007.

Despite the fact that South Africa's Constitution was the first to bar discrimination based on sexual orientation,<sup>313</sup> homosexuals continue to face violence and harassment on account of their sexual orientation. On 11 July 2007, a homosexual man brought a charge against a police officer, after he was allegedly mocked for his sexual orientation, taken into custody without charge and beaten. According to a report, the police from the region in question have a history of mistreating homosexuals who report crimes to its officers.<sup>314</sup> A number of brutal rape and murder cases against homosexuals have been reported in the previous year. A 16-year-old girl who was living openly as a lesbian was found raped and stabbed to death in April 2007. In July 2007, an LGBT activist and her friend were brutally raped, beaten and murdered in the Soweto Highlands, and in an unrelated case, a murdered lesbian woman's body was found naked with severe head wounds.<sup>315</sup> During October 2007, a homosexual man was found stabbed to death in what a gay rights organisation described as amounting to a hate crime.<sup>316</sup> The South African Human Rights Commission (SAHRC) has met with the homosexual community following the surge in murders of lesbians, but there has been little effort by the government to track cases of violence against LGBT persons and little has been done to address the larger issue of discrimination at the root of these crimes.<sup>317</sup> The SAHRC is reportedly developing an action plan to address escalating hate crimes.<sup>318</sup>

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living visited South Africa during April 2007, and commended the government on numerous ambitious housing policies and favourable legislative initiatives. The Special Rapporteur, however, expressed concern at the lack of implementation of many of these policies. Specifically, he noted that evictions were taking place on a regular basis, sometimes to make way for large development projects, and often without regard for proper procedure. Tenants were often evicted at short notice and displaced to informal settlements where the Special Rapporteur reported witnessing "desperate conditions". He chastised the government for a failure at all levels to provide adequate post-settlement support to those displaced by large development projects, citing a "lack of proper sanitation, water, access to schools, and access to livelihood options".<sup>319</sup> Civil society groups in KwaZulu-Natal are alleging that a Bill aimed at eliminating slums in the province, is discriminating against the poor. According to reports, the Bill criminalises anyone (unlawful settlers) who attempts to resist being evicted from their home and relocates residents into potentially and arbitrarily located government "transit areas", which groups are calling "government-approved slums".<sup>320</sup> This Bill, according to the latest report by the Special Rapporteur on adequate housing, is completely contradictory to the spirit of existing laws, namely the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE Act), protecting slum-dwellers, and refers to the "control and elimination" of slums, while encouraging landlords to initiate eviction procedures where they deem fit, without laying the onus on municipalities to provide alternative housing to the evictees.<sup>321</sup> Furthermore, he echoed issues expressed in previous reports citing numerous examples where the government has failed to provide adequate housing, sanitation and basic necessities. One illustrative example cited was of a 16-storey "bad building" named San Jose (there are 235 "bad buildings" in inner-city Johannesburg alone, housing between 25,000 and 67,000 people) where residents lived without water or electricity since 2002, and have been living alongside a "sewage cesspool" in the basement, while carrying buckets of water through a single standpipe. The Supreme Court recently ruled in favour of eviction from the building, it has also provided in its judgement that the municipality should find shelter for those affected. While the judgement may be expected to set a good precedent, forced evictions without prior notification or consultation (as prescribed by the PIE Act) involving acts violating international human rights standards, such as the destruction of personal belongings, the use of threat and violence by the police and private security forces, continues to remain widespread alongside a glaring absence of safe and reasonable emergency accommodation for evictees.<sup>322</sup>

Adequate housing remains a critical challenge, largely because of the nature of land distribution. During the apartheid, 87 per cent of South Africa's land was reserved for whites, and only 13 per cent of it, largely less fertile or desirable, was reserved for the black majority constituting 75 per cent of the population. This

meant that poverty alleviation and providing adequate housing largely depended on the successes of redistributing land equitably in the post-apartheid era. The right to land, one of the cornerstones of the new Constitution (Section 25) created the Commission on Restitution of Land Rights and a Land Claims Court, and has since implemented numerous initiatives. However, on 2 November 2007, a report indicated that the government had admitted that it was far behind schedule in redistributing land to the black majority. According to a report of the Department of Land Affairs, only five per cent of white-owned commercial agricultural land had been redistributed since 1994, making it near impossible that the country would reach its target of 30 per cent redistribution by 2014.<sup>323</sup> The reasons cited by the Special Rapporteur include, the "willing buyers, willing sellers" principle, the steep rise in property prices and the lack of political will to create post-settlement support to access basic services and earn livelihoods.<sup>324</sup> The SAHRC has also alleged that the steep rise in property prices are attributed to the speculative nature of the market, and the overvaluing of land by white commercial farmers, making it difficult for the government to buy land for redistribution.<sup>325</sup>

Opposition parties in South Africa have decried the government's decision to disband the Scorpions Special Investigations Unit and integrate its functions into the police force. The Scorpions were established in 1999 as an elite, independent unit to fight organised crime and corruption. Opposition parties claim that the ruling African National Congress (ANC) party decided to disband the unit because of high-profile corruption cases brought against members of the party, mostly against newly-elected ANC leader Jacob Zuma and now former Chief of Police and head of Interpol, Jackie Selebi.<sup>326</sup> Zuma, who is favoured to become the next president, has accused the Scorpions of being a political tool of Thabo Mbeki.<sup>327</sup> The business community has also said that it was fundamentally opposed to the disbanding of the Scorpions, as it was unclear whether the new body within the police force would be as effective.<sup>328</sup> It is clear that while the Scorpions have had unprecedented success in tackling organised crime (especially racketeering and money laundering), their corruption investigations are reportedly politically motivated.

In February, South Africa's Health Minister, Manto Tshabalala-Msimang, reportedly made controversial statements about the transmission of HIV. She expressed doubt in the United Nations recommendation that circumcision reduces the risk of transmission of the disease, earning her renewed condemnation from HIV/AIDS activists. One of the world's foremost HIV/AIDS activists was quoted as saying that "there is overwhelming scientific evidence that male circumcision is one of the important ways of preventing transmission of the virus. This is proven beyond a shadow of a doubt."<sup>329</sup> Ms Tshabalala-Msimang was also severely criticised in years ago for her widely discredited suggestion that certain foods could be more effective in fighting AIDS than anti-retroviral drugs. South Africa has the largest HIV positive population in the world and continues to face an uphill battle in the fight against the disease. A large majority of the population continues to prefer traditional healers over medical doctors, complicating proper care for those infected with HIV. Ms Tshabalala-Msimang's comments are expected to further confuse patients about appropriate treatment.<sup>330</sup>

## Compliance

In its pre-election pledge South Africa committed to protect the international human rights agenda and to submit any reports due to treaty bodies. However at the Council, South Africa supported the elimination of country specific mandates. Despite its pledge, South Africa took a soft stand in giving permission for the docking of an alleged arms shipment to Zimbabwe and it failed to protect foreign migrants living in South Africa.

Whilst South Africa's pledge highlighted the fact that its Constitution guarantees human rights and fundamental freedoms, the dire state of migrants, women and sexual minorities and crime and inadequate housing show that much needs to be done to implement constitutionally guaranteed human rights and freedoms.

# 1. Background

### 1.1 Context

Sri Lanka became independent in 1948. Subsequently, ethnic Tamils claimed discrimination by the Sinhalese majority. Discriminatory government policies and three anti-Tamil riots in 1958, 1977 and 1983, led to polarisation of the two major ethnic communities in the country. One of the results was the creation of Tamil militant groups in the 1970s that advocated secession of the Tamil dominated north and east of the country. By 1983 space for political negotiation had rapidly deteriorated leading to the beginning of violent confrontation between Tamil militant groups and the government. As conflict escalated many Tamils fled as refugees. In the meanwhile following spells of violent engagements and assassinations among the various Tamil militant groups, the Liberation Tigers of Tamil Elam (LTTE) emerged as the primary Tamil militant group. After generalised violent military confrontation that saw the LTTE secure de facto control over the north and east of the country, the LTTE and the government signed a ceasefire agreement in 2002, as part of a Norway-brokered peace process. The ceasefire agreement created an opportunity for peace talks and the opening up of the north and east territories to civilian and developmental access. During April 2006, the situation deteriorated and with the resurgence of armed conflict, high numbers of civilian casualties and the displacement of tens of thousands of people. More recently, the United Nations and other aid agencies pulled out their personnel from territory held by Tamil Tigers in northern Sri Lanka on Tuesday, 16 September 2008. The week before, the Sri Lankan government had ordered aid workers to guit rebel-held areas, saying it could not guarantee their safety as it pushes ahead with a major offensive to capture the rebel stronghold, Killinochi. Ahead of the offensive, Sri Lanka's Defence Secretary had reportedly, in the repeat of an unlawful action that occurred during June 2007, advised thousands of Tamils living in the country's capital to return to their villages in the north of the country, referring to them as a national security threat.<sup>331</sup> Since September 2008, the Sri Lankan military has staged violent and allegedly indiscriminate attacks on the north of the country. Concerns are widely held for the safety of non-combatants in the region along with the perpetuation of impunity by the armed forces.

#### **1.2 UN Treaties**

Sri Lanka is a party to the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC) and its two Optional Protocols and the Convention on the Protection of the Rights of All Migrants Workers (CMW). Sri Lanka also signed the Convention on the Rights of Persons with Disabilities (CRD).

Sri Lanka has not signed the Second Optional Protocol to ICCPR, the Convention for the Protection of All Persons from Enforced Disappearance (CPD) nor the Optional Protocol to CAT.

### **1.3 UN Reporting History**

Sri Lanka has completed some of its reporting obligations due under international treaties, but has failed to satisfy all of its reporting requirements. The country owes 12 reports under six of the main international human rights instruments.

Sri Lanka has completed all reporting under CMW. Under ICESR, the country has completed one round of reporting, but the 1995, 2000 and 2005 reports are still due. Sri Lanka has completed nine rounds of reporting under CERD, but has failed to produce the 2003, 2005 and 2007 reports. Under CEDAW, the country has completed four rounds of reporting, but two reports have been due for 1998 and 2002. Sri

Lanka has completed two rounds of reporting under CAT, but still owes two reports for 2007. Under ICCPR, Sri Lanka has owed one report since 2007. Sri Lanka has completed all its reporting requirements under CRC, but it has failed to complete any round of reporting under the Optional Protocol to CRC and owes a report for 2004.

Sri Lanka has not extended an open invitation to the Council's Special Procedures.

#### 1.4 UN Voting Patterns and Performance at the Council

At the Fifth Session of the Council, on 15 June 2007, Sri Lanka supported the view that the national report of each country should be drawn up from a standard questionnaire and that outcomes of UPR should be adopted by consensus.

At the Sixth Session of the Council, Sri Lanka (on behalf of the Asian Group) stated on the UPR guidelines that all collated information should be credible and reliable and should meet "minimum evidentiary standards". It also supported the lowest requirements for eligible candidates for mandate holders.

On 19 September 2007, Sri Lanka (Asian Group) took the floor to ask what exactly was meant by the term "broad" in the expression "broad consultation process". The Facilitator responded that by using "broad" it was not necessarily specified with whom the consultations would be held, and that broad consultations could be held between various government ministries and agencies or that they could go beyond the official context to include civil society, but that this was left open.

At the Fifth Session of the Council, on 11 June 2007, an NGO stated that constitutional paralysis and unilateral actions by the executive were damaging the independence of Sri Lanka's institutions, particularly the judiciary.

At the Sixth Session of the Council, on 13 September 2007, Sri Lanka asserted that the planned visit of the High Commissioner was only one example of the positive engagement of the government with the international system and a result of a policy of openness and constructive engagement at a difficult time.

On 14 September 2007, non-governmental organisations addressed the situation of human rights in Sri Lanka, citing human rights and international humanitarian law violations by all parties in the conflict, the recruitment of child soldiers, and rising numbers of abductions and disappearances. Some NGOs urged the Sri Lankan government to agree to the establishment of an OHCHR field presence in the country. The Sri Lankan delegation replied to the joint statement, in asserting that Sri Lanka is in fact a multi ethnic and multi-religious society committed to the investigation of any and all alleged violations of freedom of religion and that this commitment was demonstrated by the cooperation with the Special Rapporteur on freedom of religion in relation to her visit during May 2005.

On 21 September 2007, Sri Lanka stressed that it had a "zero-tolerance" approach to the issue of child soldiers. The delegation said that the rebel forces (LTTE) continued to recruit children despite a number of efforts taken to prevent it. It also announced that an investigation had been initiated to clarify allegations that the government had participated in recruitment of child soldiers. Sri Lanka announced that it had created a national commission for the reintegration of children affected by armed conflict.

On 24 September 2007, Sri Lanka stated that human rights should not be viewed as a "new version of the White Man's Burden". It stated that, as a practising democracy, it cared for its people as both citizens and voters, and dismissed criticism from states that, in their own past, had practised neutrality or established concentration camps during times of war. Sri Lanka stated that the establishment of an OHCHR field presence in Sri Lanka was a decision to be taken by it alone.

A number of NGOs also expressed concern about the situation in Sri Lanka, in particular, renewed violations by security forces, enforced disappearances, targeted killings, reduced space for civil society

organisations, abductions, and the use of child soldiers. In response to the joint statement by a number of NGOs, Sri Lanka stated that the facts of the situation had been ignored and that the targeting of Sri Lanka made it impossible to give "careful attention to the improvement of the situation".

At the Sixth Session of the Council, on 11 December 2007, regarding Sri Lanka, the High Commissioner drew particular attention to the loss of credibility and independence of the National Human Rights Commission of Sri Lanka and the failure of the President-appointed Commission of Inquiry to adequately investigate abuses. In this context, Ms Arbour noted that Sri Lanka would benefit from the presence of the OHCHR in the country, with a broad mandate to offer technical assistance and public reporting. However, despite negotiations between the OHCHR and the Government of Sri Lanka, no agreement has yet been reached on a model for the OHCHR presence in the country. The Ambassador of Sri Lanka stated that the Government of Sri Lanka was determined to "root out terrorism", and was willing to engage with international mechanisms to do so. However, he followed this by saying that agreement had yet to be reached with the OHCHR regarding the establishment of a field presence in the country, and that the two parties were currently engaged in discussions of "different models" of how this could occur. He noted the upcoming visit of the Representative of the Secretary-General on internally displaced persons, Mr Walter Kälin, and the agreement "in principle" to a visit by the Working Group on enforced or involuntary disappearances. Sri Lanka stated that its negotiations with the OHCHR and other international bodies would always be informed by its determination that its national institutions and processes should be "supplemented and supported" by international assistance, but "never supplanted or substituted by the non-national".

At the Sixth Session of the Council, on 27 September 2007, Sri Lanka insisted that technical assistance and capacity building should not be imposed on States, but provided with the consent of and in consultation with concerned States and should aim to 'enhance the indigenous capacity' of States. In this regard, Sri Lanka stated that General Assembly Resolution 60/251 gave the Council a clear mandate to revisit the nature of technical assistance and capacity building to avoid reverting to the practices of the Commission on Human Rights (the Commission).

At the Sixth Session of the Council, Sri Lanka announced its abstention on the draft on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief proposed by EU.

## 2. Pledge

### 2.1 Context to Election to the Council

Sri Lanka was one of 18 Asian candidates that contested the May 2006 election to the Council for the 13 seats reserved for Asia. Sri Lanka won the elections with 123 votes, the lowest score among the Asian group. Thailand, Kyrgyzstan, Lebanon, Iran and Iraq were unsuccessful in securing a seat. Sri Lanka's tenure was for two years and it sought re-election in May 2008 where there were four vacancies for Asian states. Sri Lanka lost its re-election bid and came fifth with 101 votes (four votes more that the prescribed minimum absolute majority of 97 votes).

### 2.2 Pledge Made

In its pre-election pledge Sri Lanka promised to build the capacity of its National Human Rights Commission, as well as other independent statutory bodies. Sri Lanka also stressed that it would cooperate with treaty bodies by making timely submissions in the future. It further promised to become a party to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography. Sri Lanka promised to further the protection of international standards on human rights and humanitarian law and to promote human rights in all parts of the world. It argued that it had already invited a number of Special Rapporteurs, Special Representatives and Working Groups to visit the country. Sri Lanka stressed its active role in the promotion of international humanitarian law.

### 3. Compliance

#### 3.1 Human Rights in the Past Year

The conflict between the Liberation Tigers of Tamil Elam (LTTE) and the Sri Lankan government in the northern and eastern parts of the country intensified in the past one year. The UN estimates that over 70,000 persons have died and over 500,000 restarted have been displaced internally.

The conflict between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) was muted after a Norwegian-brokered 2002 ceasefire agreement (CFA), but restarted in 2006 and erupted in the reporting period on an escalating scale. The government imposed an embargo on rebel controlled areas, disrupting trade and restricting the availability of basic civilian goods for the population.<sup>332</sup> The government formally withdrew from the ceasefire in early January 2008, and since then a full-scale war has been officially in place. For long, both the LTTE and the government have been accused of targeting civilians and committing serious human rights violations. The government has continued to reject repeated demands by the international community and international human rights groups for UN human rights observatory mission in the country and the opening of a branch of the Office of the High Commissioner for Human Rights in Colombo. Some opposition parties were reported to have demonstrated against the UN for interfering in domestic affairs, after Louise Arbor's (High Commissioner for Human Rights) calls for increasing human rights monitoring were met with comments that pictured her as supporting "international terrorism".<sup>333</sup> In March 2008, a six-member European Union delegation visited the island and expressed concerns about the escalating conflict. It pointed out that both the LTTE and the military were conducting widespread abuses and violations. During the same time, the US State Department and Human Rights Watch have also made similar allegations.<sup>334</sup> The Sri Lankan government responded by guoting the International Committee of the Red Cross (ICRC) figures where incidences of casualties had dropped. However, the ICRC responded with a rare public statement deploring the manipulation of its statistics to cover up growing trends of violence and abuses after the ceasefire was abrogated.<sup>335</sup> On 20 May 2008, the UN Human Rights Council voted against re-electing Sri Lanka to the Council due to widespread allegations of abuses.<sup>336</sup> The Sri Lankan Air Force has been accused of indiscriminate aerial bombings. It is reported that despite government assurances to only target military rebel positions, as demanded by humanitarian law, the aerial raids also affected civilians and non-military targets.<sup>337</sup> The LTTE has reportedly engaged in bomb blasts aimed at civilian targets in Colombo claiming retaliation to government air strikes that claimed civilian casualties. For example, during the weekend of 14 June 2008, government strikes killed an estimated (but contested) 24 people in Mullaitivu district, including civilians according to anti-government sources, whilst the military statement reported no civilian casualties. The LTTE reportedly retaliated by attacking a police station in the northern town of Vavuniya, killing at least 12 police officers and injuring dozens more.<sup>338</sup> According to an op-ed by the Asia Times Online, the reason behind retaliation on civilian targets also lies in pushing public support for the military offensive up north down, thereby easing pressure on the LTTE.<sup>339</sup>

In Sri Lanka, despite specific humanitarian law provisions limiting acts of war strictly to military targets, civilians have come to bear the burden of re-escalating conflict. In the past one year increasing intensity of the conflict led to a steep rise in civilians affected by the hostilities, either directly targeted or as bystanders.<sup>340</sup> Since the government abrogated the ceasefire agreement in the beginning of 2008, the number of indiscriminate attacks affecting civilians, carried out by all parties rose in the north, east and south of the country, whilst the intensified fighting between the government and the LTTE in the Jaffna, Mullaitivu, Kilinochchi, Vavuniya and Mannar districts resulted in increasing numbers of internally displaced people.<sup>341</sup> The International Committee of the Red Cross reported that the civilian death toll reached "appalling levels", as within the first six weeks of 2008, more that 180 civilians in the capital, Colombo and other cities in the country.<sup>342</sup> Available data, submitted to the Presidential Commission of Inquiry, on severe human rights abuses in the first half of 2007, show a number of trends. Of the 662 reported cases of killed civilians and the 540 reported disappearances, Tamils who form16 per cent of the population make up for 84 per cent and 78 per cent respectively. Among those killed are 14 humanitarian workers

and religious leaders, three media personnel and 25 children. The majority of the killings and disappearances occur in districts directly affected by the conflict, especially the Jaffna peninsular. Most vulnerable are young Tamil men from Jaffna, whilst least affected are Sinhalese women.<sup>343</sup>

On 28 November 2007, a parcel bomb in a commercial centre in Colombo killed 17 civilians and wounded dozens. On the same day, a minister of the ruling coalition from the Tamil Eelam People's Democratic Party was targeted by a suicide bombing.<sup>344</sup> On 16 January 2008, a bomb tore through a bus packed with school children in Butalla, killing 26 people and wounding dozens, for which the government blamed the LTTE.<sup>345</sup> In an attack on a civilian bus in the central city of Dambulla, 18 people were killed and over 50 wounded, for which the government and the LTTE blamed each other.<sup>346</sup> Whilst the Sri Lankan military is accused of indiscriminate attacks which affect civilians, due to contradictory reports by both sides, the sensitive nature of the situation, and restrictions placed on journalists, information is difficult to verify. On 27 November 2007, the Sri Lanka Air Force carried out an air raid on the LTTE "Voice of Tigers" radio station near the city of Kilinochchi, headquarters of the LTTE. An estimated, but contested number of four civilians died in the attack.<sup>347</sup> In January 2008, a bomb ripped through a bus in Monergala district leaving 26 dead, including several school children.<sup>348</sup> More recently, on 6 June 2008, the LTTE conducted two attacks targeting civilian buses, leaving 22 dead and over 80 injured in Colombo.<sup>349</sup> In the aftermath of the attacks, the UN has called for the government to protect unarmed civilians better, especially in conflict zones.

Alongside civilian casualties, another critical challenge affecting the island is the pattern of enforced or involuntary disappearances since the truce was called off in 2006. Enforced disappearances and abductions are endemic in Sri Lanka and all parties of the conflict are accused of being involved in them. The UN Working Group on Enforced and Involuntary Disappearances expressed its concern about the high number of disappearances from the country.<sup>350</sup> Concerns were raised that disappearances are part of the Sri Lankan military's counterterrorism strategy.<sup>351</sup> The fact that many disappearances occur in high security zones and during curfew hours points to complicity and involvement of security forces, particularly in the case of the government-controlled Jaffna peninsula.<sup>352</sup> A majority of victims, whilst including Sinhalese and Muslims, are Tamil. All major conflict zones and the capital Colombo are affected. Exact numbers of disappearances, since the resumption of violence in 2006, are unavailable and it is feared that many who have disappeared may have been killed. A number of the enforced disappeared people might be held under the Emergency Regulations, which allow for detainment of up to one year without charge.<sup>353</sup> In a rare case of government action against this phenomenon, it was reported on 4 July 2007 that Sri Lankan police had arrested one ex-air force officer and five security personnel after they were linked to several abduction and extortion cases.<sup>354</sup> However, according to conservative estimates released by the Asian Legal Resource Centre (ALRC), between January and June 2007 alone, there have been 396 reported cases of enforced disappearances.<sup>355</sup> Estimates by the UN Working Group on Enforced Disappearances claimed that in 2000, Sri Lanka had the second highest number of disappearances behind Iraq, with over 12,000 disappearances reported after detention by Sri Lankan security forces.<sup>356</sup>

Torture with impunity by the Sri Lankan security forces has also been extensively reported since the abrogation of the CFA between the LTTE and the government in January 2008. Whilst the CFA was breached in principle since early 2007, the official unilateral abrogation by the government has indicated, as international human rights groups allege, that the "government has apparently given its security forces a green light to use 'dirty war' tactics". Between 1 and 8 October, the Special Rapportuer for Torture made visits to 12 detention facilities in Sri Lanka, in general without prior notification, and he noted several instances of torture, especially by the Terrorist Investigation Department (TID).<sup>357</sup> According to the report, "torture is widely practised", and methods used include beating to the soles of the feat (falaqa), blows to the ears (telephono), positional abuse when handcuffed or bound, suspension in various positions, including strappado, "butchery", "reversed butchery" and "parrot's perch" (or dharma chakara), burning with metal objects and cigarettes, asphyxiation with plastic bags with chilli pepper or gasoline, and various forms of genital torture.<sup>358</sup> He also concludes that "considerable number of clearly established cases of torture by TID and other security forces, together with various efforts by TID to hide evidence and to obstruct the investigations of the Special Rapporteur, leads him to the conclusion that torture has become a routine practice in the context of counter-terrorism operations, both by the police and the armed forces".<sup>359</sup>

Impunity to security forces, especially to counterterrorism has become the norm according to the above report by the Special Rapporteur. The criminal justice system in Sri Lanka is slow and ineffective under normal circumstances but comes to a halt when agents of the state are involved, being a grave structural impediment to the judicial process. However, more significant is the government's unwillingness to prosecute state or state allied security personnel. Among the prominent cases is the extrajudicial killing of 17 aid workers of the international NGO Action Contre la Faim, which remains to be fully investigated, amid evidence pointing to the involvement of security forces. Following the observation of the investigation undertaken, the International Commission of Jurists recommended in March 2007, another independent and impartial inquiry into the incident.<sup>360</sup>

Among the many factors that facilitate impunity of government security forces has been the steady expansion of security legislation that has consistently undermined the rule of law. The 17th amendment to the Constitution created a Constitutional Council (CC), independent of the executive to appoint members of public commissions. However, in 2006, over a political dispute, the Parliament failed to appoint new members to the CC. Consequently, the executive, namely President Rajapaksa appointed members to public commissions, like the Police Commission or the National Human Rights Commission, discrediting the public reputation of the individual appointees and the institutions. As a consequence, in December 2007, the National Human Rights Commission was downgraded to a B-level by the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights. The Coordination Committee justified its decision with the lack of independence of the commissioners and the Commission's failure and public expression of inability to investigate numerous cases of disappearances.<sup>362</sup>

Since 14 August 2005, after an attack against Minister Kardirgamar, the draconian Emergency Regulations came into place again and have been extended several times. They grant the security forces sweeping powers of arrest and detention, holding suspects without charge for up to a year. These regulations are characterised by loose wording, i.e. acts "prejudicial to the national security", which invites widespread application also against peaceful and legitimate dissent. It is alleged that these regulations are contrary to international human rights standards, to which Sri Lanka is a state party.<sup>363</sup>

In 2006, the regulations were amended by the Prevention and Prohibition of Terrorism and Specified Terrorist Activities Regulations. Whilst the regulations themselves are exempted from legal examination by the Emergency Regulations,<sup>364</sup> the regulations institutionalise impunity for civil servants deemed to be acting in good faith.<sup>365</sup>

Another structural weakness of the system of protection of human rights is the non-existence of a witness protection system.<sup>366</sup> Witnesses and victims express fear of retaliation by the security forces in case of testimony. According to a report by an international human rights group, witnesses in criminal cases involving the security forces have faced threats, harassment and violence. The implementation of a draft Bill on Victim and Witness Assistance and Protection is still pending.<sup>367</sup> In a regular pattern, as official acknowledgement of the dysfunctional justice system, commissions of inquiries were set up in numerous cases of severe human rights violations, including disappearances and extrajudicial killings. Human rights organisations stated that these commissions repeatedly failed to bring justice to the victims.<sup>368</sup> In 2006, partly as a consequence of the lack of lacking credibility of these commissions, President Rajapaksa set up a Presidential Commission of Inquiry (PCI) limited to the investigation of 16 specific cases and a monitoring International Independent Group of Eminent Persons (IIGEP). The Group repeatedly complained about the conduct of the PCI and external interference into its work.<sup>369</sup> On 31 August 2007, the Presidential Commission released a report stating that of the 1,992 persons who disappeared, 1,425 persons reappeared again, without giving further details.<sup>370</sup> However, both the IIGEP and other civil society members question the ability and willingness of the Commission to carry out its task.<sup>371</sup> During the same month, it was reported that 50 bodies were found, and 38 more people were unaccounted for, with some of the extrajudicial killings allegedly perpetrated by security forces.<sup>372</sup>

State complicity in human rights violations has also extended towards providing tacit support to armed groups contesting elections and disrupting democratic processes. In March 2008, the Karuna Faction (ex-LTTE), better known as the TMVP (Tamil Makkal Viduthalai Pulikal) won local elections under the ruling alliance's banner after widespread reports of voter initimidation, violence and balllot rigging.<sup>373</sup>

Reports suggest that the LTTE and the breakaway Karuna faction (TMVP) continue to recruit child soldiers for active fighting purposes. The Security Council Working Group on Children and Armed Conflict condemned both groups of such actions and demanded that children be returned, the neutrality of schools guaranteed and access of humanitarian workers to the areas under their control granted.<sup>374</sup> The Karuna faction is accused of recruiting children from camps for Internally Displaced Persons,<sup>375</sup> whilst the LTTE apparently filled its ranks with orphans following the 2006 tsunami.<sup>376</sup> Due to the fact that the Karuna faction operates in government-controlled areas and is reported to have assisted in military activities, suggests that at least some factions of the security forces cooperate with the armed group in its practice of child abductions.<sup>377</sup>

The UN Special Rapporteur for children in armed conflict summarised in his report covering the October 2006 – August 2007 period, stating that UNICEF had reports of 339 children recruited by the LTTE whilst it had released 226 children in the same time span. According to the UNICEF numbers, the Karuna faction recruited 246 children and released 80 in the named period.<sup>378</sup> Child abductions are reportedly carried out by the LTTE and Karuna faction for recruitment purposes. Reportedly, these figures are an underestimation of the real numbers as many families fail to file complaints with the police or humanitarian organizations.<sup>379</sup> Two cases are reported of detentions of children from the Jaffna district by the Sri Lankan security forces, who since have gone missing.<sup>380</sup> The LTTE issued a draft working plan on 28 March and 19 July, promising to raise the minimum age in its ranks to 18 until end of 2007. However, such plans were also drafted in 1998 and 2006, implementation has yet to occur.<sup>381</sup>

The Government of Sri Lanka has highlighted the rebels' practise of recruiting child soldiers and is demanding international and UN action. In February 2008, Sri Lanka presented a report on the use of child soldiers by the LTTE before the UN Security Council Working Group on Children and Armed Conflict and demanded international sanctions against LTTE cadre. However, the government failed to address the practise of recruiting or abducting children for fighting purposes of the Kaurna faction it supports in the war against the LTTE. UNICEF, part of a UN Security Council task force tasked with monitoring the use of children in the conflict, reported that the Karuna faction/TMVP is denying UNICEF personnel access to its camps. UNICEF was to assure that no warring party in Sri Lanka is using children in the armed conflict.<sup>382</sup>

Threats to human rights defenders (HRDs) and journalists also continue to endanger freedom of expression on the island. Two cases after the infamous Muttur massacre highlight the worrying trend. In June 2007, two aid workers with the ICRC (Red Cross) were gunned down by assailants claiming to be policemen,<sup>383</sup> and the following month, a local employee with the Danish Refugee Council was shot on his way to work.<sup>384</sup> As for the media, several cases have been reported where journalists have been harassed, beaten and even killed. The Sri Lankan media is divided along ethnic and linguistic lines with state-owned print and broadcasting outlets and a number of private actors. In the framework of the cease fire agreement, the government legalised broadcasts by the Tamil Tigers, until it bombed the Tiger's broadcasting station in Killinochchi in late 2007. In 2007, the government suspended the licenses of five critical radio stations for disseminating a wrong news item and restricted access to the news website "Tamilnet". In the northern and eastern regions, threats reportedly extend as well against international correspondents. Defence secretary and brother of the president, Gotabhaya Rajapakse, was allegedly involved in threatening the editor of the *Daily Mirror*, Mrs. Liyanaarachchi.<sup>385</sup>

The media gets frequently caught in the escalating confrontation. Both the government and the LTTE are accused of threatening and attacking dissenting and critical voices. The government is accused of restricting the flow of independent information on the conflict generally and to the conflict areas in particular, whilst the LTTE forces the media in areas under its control to disseminate their propaganda. The government controlled Tamil media is under pressure to dissuade the population from LTTE support. In the Jaffna peninsula, which is mainly Tamil populated and under direct army control, lack of proper investigations following murders, disappearances and threats against journalists are restricting media freedoms.<sup>386</sup> In March 2008, five Tamil journalists were detained for allegedly receiving funds from the LTTE.<sup>387</sup> Recently, the Ministry of Defence made a scathing attack on war reporting by journalists, claiming that any criticism against government tactics is equivalent to aiding the LTTE. Reporters Sans Borders called this statement "extremely threatening", lending further credence to allegations of government complicity in harassment

of journalists.<sup>388</sup> Just prior to this statement, two incidents sparked protests by journalists throughout the island, with the abduction and beating of Keith Noyahr, deputy editor of *The Nation* on 22 May 2008,<sup>389</sup> and the killing of Jaffna-based television journalist P. Devakumaran on 28 May 2008.

Arbitrary detentions have not been restricted to journalists and human rights defenders. An increasingly common reaction of the government to attacks by the LTTE in Colombo and Sinhalese areas has been random arrest and eviction of Tamils from the capital. This practice is facilitated by the loosely worded Emergency Regulations and is targeted at young Tamil men, suspected of collaborating with the LTTE. In early June 2007, the Colombo police reportedly evicted 376 persons from temporary lodges from the capital, stating that LTTE members would use such places before attacking and that it was for the sake of the Tamils own safety. The Tamils were forced to board buses heading north and eastwards.<sup>390</sup> A case filed in the Supreme Court led to an interim order restraining the evictions, whilst domestic and international condemnation led the government to consider compensation.<sup>391 392</sup> The Centre for Policy Alternatives reported that on 1 and 2 December 2007, allegedly in response to suicide bombings in Colombo, over 1000 Tamils were arrested in the capital and its suburbs in counterterrorism investigations, using the wide powers granted under the Emergency Power Regulations. Many of the detainees and their families have not been given reason for their detention and subsequent arrest.<sup>393</sup> Acts such as group detentions on mere suspicion are in violation with basic human rights principles and lead to degrading and inhuman situations in detention centres.

The more than twenty-year conflict between Tamil rebels and the Sri Lankan government has led to a large number of internally displaced persons (IDPs). The December 2006 tsunami that hit the east coast and the renewed violence since 2006, increased particularly after the formal expiry of the cease fire agreement in January 2008, resulted in IDPs. In greas of fighting, communities often flee when artillery shelling and ground operations intensify, but also "humanitarian operations" by government forces and rebel groups have caused mass evictions, with harsh consequences for the affected communities.<sup>394</sup> Humanitarian agencies encounter strong difficulties in accessing IDPs in LTTE-held areas. IDPs and the civil population in government-controlled regions, particularly in the Jaffna peninsular and Mannar district, face sharply increased costs for basic goods and services due to increased security checks and closed supply routes.<sup>395</sup> Before November 2007, many international relief agencies for IDPs on the eastern part of the island, especially the Batticaloa district, reported massive restrictions in their access to the refugees. The security forces later eased access rules to the region, facilitating resettlement and relief activities. However, IDPs and the civil population in the region still suffer from an unstable security situation, disappearances and abductions, blamed on the armed groups active in the area.<sup>396</sup> In the Mannar district in the north-west of the island, increased military activity and fighting since August 2007 forced over 3000 persons to seek refuge in public buildings and with host families, while in the neighbouring Manthai West and Madu, over 16,000 persons are thought to be displaced. In the former case, IDPs fled their homes on their own initiative after learning that a military operation was going on or were instructed by the military to vacate their villages. The displacements appeared better prepared by the military compared to the "liberated" areas in the east. Sites for the displaced were assigned and community and church leaders informed. Fighting and especially shelling from government to LTTE-controlled areas continue, which affect negatively the security situation of the IDPs. Encouragingly, the military allowed go-and-see visits of the displaced to their property and set up a mechanism for it. At the time of writing, the displaced are kept uninformed about the duration of the displacement. 397

In March 2007, against the UN guidelines for displaced persons, the military forced about 900 IDPs from the "liberated" Batticaloa district in the east to return to Trincomalee district as part of a scheme of return affecting about 2,800 IDPs. Despite communicated fears by the IDPs of the security situation, reprisals and abductions by the LTTE and communal violence in parts of Trincomalee, the military reportedly threatened to withhold humanitarian aid to the refugees, while in some incidents, the displaced reported threats of violence by various security forces agencies. Reportedly, cadres of the Karuna faction were present at camps in Batticaloa, underlining the cooperation between the government and the group. There are differing accounts on the nature of a return move beginning in May 2007, to areas of western Batticaloa, affecting a number as high as 90,000 IDPs. UNHCR reports of conditions conducive for voluntary return, whilst other humanitarian aid agencies report of heavy and coercive army presence and significant problems facing

returning IDPs.<sup>398</sup> In a report released on 22 February 2008, the Common Humanitarian Action Plan of the UN reported that government agencies and NGOs should be prepared to assist approximately 500,000 people affected by the conflict by the end of 2008, including IDPs, refugees and economically affected persons. The report also warned that displacement levels could be similar to 2007 when 308,000 persons were forced from their homes. Whilst, more than 140,000 have now been resettled in eastern Sri Lanka, as of mid-February 2008, 225,000 people remained displaced in eight north and eastern districts.<sup>399</sup>

The Muslim minority has also been considerably affected by the conflict. Since 1990, the International Crisis Groups estimate that approximately 75,000 Muslims have been displaced from their homes, especially in the northern and eastern provinces. Ethnic tensions between Tamils and Muslims have also escalated into violence and deaths. Between 22 May and 2 June, it was reported that violence between Tamils and Muslims in the run up to the provincial elections in the eastern province left at least two Tamils and five Muslims dead in the Batticaloa district.<sup>400</sup>

During September 2008, the Sri Lankan government, ahead of its major military offensive on the northern part of the country, ordered aid workers to depart the area, saying it could not guarantee their safety. This is particularly the case where, in a repeat of an unlawful action that occurred during June 2007, Sri Lanka's Defence Secretary advised thousands of Tamils living in Colombo on Saturday, 20 September 2008, to return to their villages in the north of the country ahead of the offensive; referring to their presence in the capital as a national security threat - those Tamils remaining resident in Colombo having been required to register with the police. Given the intensity of the attacks on the region, which already had a large internally displaced population, along with the fact that independent media were banned from entering the region and recent unconfirmed reports that have suggested unprecedented and at times indiscriminate attacks on civilian populated areas, there are fears of a developing humanitarian crisis. The resumption of armed conflict between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) has been reportedly accompanied by widespread human rights abuses by both sides. While the LTTE has continued its deliberately provocative attacks on the military as well as its violent repression of Tamil dissenters and forced recruitment of both adults and children, the government has reportedly used extrajudicial killings and enforced disappearances as part of a brutal counter-insurgency campaign. The situation in the north of the country appears to be developing into a humanitarian crisis, with stranded internally displaced civilians unable to access safe passage and caught in reportedly indiscriminate crossfire.

# Compliance

In its pre-election pledge, Sri Lanka stressed that it would cooperate with treaty bodies by making timely submissions in the future. It further promised to become a party to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography. Despite this, Sri Lanka is yet to fulfil many of its reporting requirements.

In its pledge, Sri Lanka committed to further the protection of international standards on human rights and humanitarian law and to promote human rights in all parts of the world. The country argued that it had already invited a number of Special Rapporteurs, Special Representatives and Working Groups to visit the country. It stressed its active role in the promotion of international humanitarian law. However, Sri Lanka chose to take a reluctant stand on encouraging states to hold broad consultations with stakeholders prior to the UPR. In the domestic sphere Sri Lanka has faced severe complaints of violating international humanitarian law. The government has also failed in its attempts to hold serious inquiries into these allegations.

Sri Lanka further promised to build the capacity of its National Human Rights Commission, as well as other independent statutory bodies. Despite this, Sri Lanka's National Human Rights Commission remains susceptible to executive interference. Other statutory bodies face a similar situation and new bodies including commissions of inquiry have been noted for their inability to independently investigate cases.

# 1. Background

### 1.1 Context

The United Kingdom (UK) is a constitutional monarchy. Historically the world's largest colonial power, it is today a major European and global power. The UK is a nuclear power and a member of the UN's Security Council. It is made up of four constituent countries, England, Northern Ireland, Scotland and Wales. The people of Scotland, Wales and Northern Ireland have separate democratically elected legislatures: the Scottish Parliament and the Welsh and Northern Ireland Assemblies. Westminster continues to legislate on certain matters that affect the whole of the UK. Conflict between the government and separatists in Northern Ireland led to widespread violence and human rights violations which ended with the Good Friday Agreement in 1998.

UK government introduced explicit protection of human rights into the UK law by means of the Human Rights Act of 1998. The Act gives effect in domestic law to the rights in the European Convention of Human Rights (ECHR) which the UK has ratified. The Equality and Human Rights Commission (EHRC) was established on 1 October 2007. The EHRC brings together the work of Great Britain's three previous equality commissions and also takes on responsibility for new strands of discrimination law as well as human rights. It has powers to enforce equality legislation and a mandate to encourage compliance with the Human Rights Act.<sup>401</sup>

### **1.2 UN Treaties**

The United Kingdom is party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the UN Convention on the Rights of the Child (CRC). On 30 March 2007 the UK signed the Convention on the Rights of Persons with Disabilities (CRPD) and aims to ratify the CRPD by December 2008.<sup>402</sup>

The government announced its intention to implement the necessary legislative and procedural changes to enable ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings by the end of 2008.

Core treaties to which the United Kingdom is not a party are ICCPR-OP1, CRC-OP-SC (signature only, 2000), CED, CPD (signature only, 2007), CPD-OP and ICRMW.

### **1.3 UN Reporting History**

The UK has completed almost all its reporting obligations under the international treaties with the exception of the eighteenth and nineteenth reports of the Committee on the Elimination of Racial Discrimination (ICERD), which have been overdue since 2006.

The UK has issued an open invitation to the UN Human Rights Council's Special Procedures.

### 1.4 UN Voting Patterns and Performance at the Council

At the Sixth Session of the Council, on 17 September 2007, the UK stated that the mandate on freedom of religion or belief is of ever increasing importance.

It further stated that it would replace the Working Group on Contemporary Forms of Slavery of the former Sub-Commission with a Special Procedures mandate to avoid a protection gap and it convened an open consultation on its proposal.

At the Sixth Session of the Council, on 20 September 2007, the UK supported the draft resolution on the minority issues forum. The forum would complement the work of the Independent Expert on minority issues and serve to institutionalise the participation of NGOs, including those without ECOSOC consultative status. The forum would not adopt binding decisions, but would aim at mainstreaming minority issues in the work of the Council.

On 26 September 2007, the UK welcomed the draft resolution extending the mandate of the Independent Expert on the human rights situation in Burundi and it supported the request for renewing the mandate. It also sponsored the draft resolution entitled "Advisory Services and Technical Assistance for Liberia" and voted in favour of the draft on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

# 2. Pledge

### 2.1 Context to Election to the Council

The UK was one of the nine contestants for the seven seats reserved for the Western Europe and Other States Group in the UN Human Rights Council elections of 2006. It was elected with 148 votes. The UK was re-elected to the UN Human Rights Council in the 62nd session of the GA on 16 May 2008 with 120 votes (required majority of 97) and will serve until 2011.

### 2.2. Pledge Made

In its pre-election pledge, the UK made a commitment to work in partnership to reinforce human rights at the heart of the UN and to work for progress on human rights globally through international bodies such as the Commonwealth, the World Bank and the European Union.

The UK made a number of international commitments. It pledged to seek the advance of the human rights themes of gender-based violence and the implementation of UN Security Council Resolution 1325 on Women, Peace and Security. It committed itself to combating torture. The UK pledged to tackle modern-day slavery and human trafficking. The country made a commitment to promote the right to education and gender equality in education. The UK pledged to the containment and progressive elimination of the spread of HIV/AIDS. The UK also pledged to "engage business as a positive force for the promotion of human rights through …Corporate Social Responsibility".<sup>403</sup>

Furthermore, the UK pledged to uphold the highest standard of human rights domestically. It made a commitment towards tackling inequality and discrimination, specifically mentioning the modernisation of equality legislation and the creation of an Equality Bill, increasing race equality and community cohesion, and ensuring that "a person's racial or ethnic origin is not a barrier to success".<sup>404</sup> The UK also pledged commitment to the protection of children's rights.

# 3. Compliance

### 3.1 Human Rights in the Past Year

While many human rights issues have come to the fore, the major concern continues to be expressed about the UK's anti-terror laws. Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief of the United Nations Human Rights Council, following her visit to the UK during June 2007, concluded that "laws have been introduced which undermine the human rights of all".<sup>405</sup>

The Home Secretary has also been granted powers to extend pre-charge detention for terrorism suspects from the existing 28-day limit to 42 days. A series of amendments to the legislation increasing pre-trial

detention were included immediately prior to the vote to prevent opposition to the Bill from succeeding, including greater parliamentary oversight and the stipulation that extra powers of detention could only be used in the event of a "grave exceptional threat".<sup>406</sup> A report by the Joint Committee on Human Rights said that the amendments offered were "inadequate to protect individuals against the threat of arbitrary detention".<sup>407</sup> The proposed extension would be incompatible with the UK's obligations under international law including Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the European Convention of Human Rights (ECHR).<sup>408</sup> They would undermine the right of anyone who is detained by the state to be told promptly why they are being held and what they are charged with before being put on trial. Human Rights groups in the UK, describe the proposals as an "international embarrassment" which "will undermine Britain's international reputation as a country which respects the rule of law".<sup>409</sup> The current length of pre-charge detention already exceeds that in other comparable democracies and is by far the longest in the European Union.<sup>410</sup>

The Prevention of Terrorism Act, 2005 introduced a control order regime that allows the government to impose certain restrictions on individual liberty on the basis of secret intelligence.<sup>411</sup> The restrictions can be placed on, for example, the person's work, communication, residence or movement, equivalent to criminal punishment without trial. The UK Court of Appeal affirmed the High Court decision that certain obligations imposed by the Prevention of Terrorism Act amounted to a breach of Article 5 (1) of the European Convention on Human Rights. Furthermore, The Terrorism Act, 2006 makes it illegal to issue a statement that is likely to be understood by some or all of the members of the public to whom it is disseminated as a direct or indirect encouragement or other inducement to commission, prepare or instigate acts of terrorism. A link to a particular terrorist act does not need to be established. Due to the breadth of the definition of terrorism this offence has serious implications for freedom of speech.<sup>412</sup>

Whilst torture is expressly prohibited under UK law, and the government has, reportedly, for the most part diligently complied with its obligations under CAT, concerns have been raised about Memorandums of Understanding (MOUs) used to return individuals to countries which have been found to violate the prohibition of torture. The UK government has maintained that diplomatic assurances are sufficient to protect the deportees from risk. However, the assurances are deemed to be unenforceable.<sup>413</sup> The UK has MOUs with three countries (Jordan, Libya and Lebanon) to facilitate deportation of terrorist suspects, and separate arrangements are in place for deportations to Algeria. The Special Rapporteur on the question of torture argued that requesting diplomatic assurances to expel persons in spite of a risk of torture, aims at circumventing the UK's international obligations and customary international law, namely non-refoulement.<sup>414</sup> The UK has also been criticised for its involvement in a US programme of renditions (the practice of transporting terror suspects to third countries, which may not have adequate human rights safeguards, for interrogation). In February 2008, the government admitted (despite their previous denial) that two US "extraordinary rendition" flights landed on UK territory in 2002.<sup>415</sup>

Furthermore, the UK government has been criticised for trying to limit its human rights obligations outside the UK, especially as regards to their armed forces in Iraq. In June 2007, a landmark decision by the High Court regarding the torture and death of Baha Mousa in 2003 whilst in British custody in Basra, mandated that the Human Rights Act applies overseas, including in detention centres administered by British soldiers.<sup>416</sup>

The death of Jean Charles de Menezes, a Brazilian migrant, who was shot five times by plainclothes police officers on 22 July 2005, and whom the police later acknowledged had been killed by mistake, was noted by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. After investigation, the Office of the Commissioner of the Metropolitan Police was convicted of an offence under health and safety legislation in relation to this operation, in November 2007.

As home to some of the world's largest private companies, the UK is obliged to hold these organisations responsible for any extraterritorial human rights infringements they may make.<sup>417</sup> However, little progress has been made in this regard in the past year. The UK's 2007 Foreign and Commonwealth Office (FCO) Report cites its commitment to take "action to stop irresponsible trade in arms that holds back development

and perpetuates inequality, fuels conflict, and results in many people around the world being injured, killed or subject to human rights abuses".<sup>418</sup> In spite of this, the UK continues to remain the world's second largest arms exporter behind the US with a 20 per cent share of the world market. The industry has been criticised for selling arms to countries with questionable human rights records and for fuelling conflict in sensitive regions, as the UK trades arms with half the countries listed in the FCO report as major countries of human rights concern, including the main importer of UK arms, Saudi Arabia. Other countries identified in the FCO's report as "areas of concern", that the UK had approved arms export licences to, included Afghanistan, Iraq, Israel, Turkmenistan and Columbia.

In response to the UK government's initial response to public consultations on UK arms export controls, the UK Working Group on Arms welcomed the announcement of some improvements to the controls, but warned that the government must go further if it wanted to signal a new approach to UK arms exports. Specifically, concerns were raised that whilst small arms and light weapons were controlled, lack of regulation over trade in conventional arms will leave the threat of proliferation unchecked.<sup>419</sup> Furthermore, controversy surrounding the Al Yamamah arms deal worth 43 billion pounds with Saudi Arabia continues to haunt BAE Systems (now the world's largest arms company following the purchases from Lockheed Martin) and the government. BAE is accused of corruption, maintaining a 60 million pound Saudi "slush fund" and making illegal payments to the Saudis in order to secure contracts. BAE was subject to investigation by the UK's Serious Fraud Office (SFO). However, this investigation was discontinued on the 14 December 2006 "to safeguard national and international security".<sup>420</sup> On 10 April 2008, the High Court ruled that the UK's SFO, acting on government advice, had behaved unlawfully in closing down the investigation. Lord Justice Moses, a judge on the case, told the High Court that the SFO and the government had given in to "blatant threats" that Saudi cooperation in the fight against terror would end unless the corruption enquiry was stopped.<sup>421</sup> However, the House of Lords overturned the High Court's ruling on 30 July 2008, soon after BAE appealed the decision on grounds of national security.<sup>422</sup>

Aside from the arms trade, UK mining companies have come under increasing criticism for alleged complicity in human rights violations, including pollution and failures to respect the right to health and indigenous rights in countries across Africa and Asia. After widespread allegations of violations such as fuelling conflict and creating pollution by companies like Anglo Gold, Anglo Platinum and Vedanta surfaced in 2006, issues such as displacement, forced resettlement and indigenous rights came to the forefront. In November 2007, it was reported that Anglo Platinum had clashed with poor villagers near the Bushel Mineral Complex in South Africa, and forcibly resettled them to Magobading in order to make way for the construction of a new mine.<sup>423</sup> On 17 April 2008, it was alleged that another UK mining company, Rio Tinto, had been financing the Indonesian military to carry out violations in the West Papua region, denying the rights of the indigenous Koteka tribesmen and causing widespread pollution and damage to indigenous lands.<sup>424</sup> More recently, concerns were raised about Bauxite mining by Vedanta in the Indian state of Orissa, after the Indian Supreme Court upheld an Indian High Court judgement and allowed mining in protected land.<sup>425</sup> but also harm the fertility of the lands around the sacred Nyangiri hills, and therefore violate the rights of the subsistence-based indigenous Dongria Kondh tribe.<sup>427</sup>

According to human rights groups, it is estimated that more than 280,000 refused asylum seekers in the UK are not permitted to work and receive only a minimal level of asylum support. It has also been reported that many of the victims of human trafficking are removed from the UK as illegal entrants without a proper assessment of the risks they might return to, because of a failure to identify them as victims of trafficking. Concerns abound that identified victims of trafficking should not be treated as ordinarily illegal entrants since they are already victims of human rights violations and the method of entry into the UK is normally organised by someone else. In such cases, the victim has no other choice than to follow the instructions of his/her trafficker.

Individuals who are subject to immigration control can find it difficult to gain access to benefits as a result of a rule denying them recourse to public funds. Women who have experienced violence in the UK, including domestic violence and trafficking, suffer even more as a result. This rule provides that certain categories of immigrants with leave to enter and remain in the UK for a limited period do not have the right (subject to a few limited exceptions) to access benefits. <sup>428</sup> There are, however, policies in place for the most vulnerable categories of immigrants, such as refugees who can access benefits following grant of refugee leave, which is given for a limited period of five years, or to individuals granted humanitarian protection if there is found to be a risk of serious harm upon return to the home country (not for a Refugee Convention ground), or for those granted discretionary leave (which is granted on humanitarian grounds, to minors, for medical reasons (HIV), or to allow a family to remain together, etc.). When an individual is granted leave as a result of a relationship, such as joining a spouse, that individual is required to show that she/he can maintain themselves without recourse to public funds or if coming to the UK as a worker etc.

Women's rights are protected by stringent laws in the UK. However, violence against women, including rape and domestic violence, continue to be recorded in large numbers. According to the British Crime Survey (BCS), approximately 43,755 instances of "most serious sexual crimes" (rape, sexual assault and sexual activity with minors), including 12,603 rapes of females, were reported to the police between June 2006 and June 2007.429 Estimates from the BCS questionnaires through sampling techniques revealed 2.47 million cases of violent crime, of which 395,360 incidents of domestic violence between April 2006 and March 2007 were calculated.<sup>430</sup> Protection of women's rights has been reported to be a particularly sensitive and serious issue with immigrant populations. For example, while it is hard to ascertain accurate figures, a local women's rights NGO has estimated that approximately 6,500 women in the UK are at risk of undergoing the practice of female genital mutilation (FGM). In addition, there has been a steep decline in both the prosecution and conviction rates for cases involving rape. Furthermore, in spite of the existence of the Equal Pay Act, women continue to earn on average 17 percent less than their male counterparts and the differential is even greater for minority women. And, women parliamentarians remain under-represented in Westminster. A positive development has been the enactment of the Forced Marriage (Civil Protection) Act, 2007, which provides for the protection of individuals from being forced to enter into marriage without their free and full consent; for protecting individuals who have been forced to enter into marriage without such consent; and for connected purposes.

There were also concerns raised about freedom of information in the UK. The House of Commons lost its High Court case against a decision to force disclosure of MPs' expenses. The Freedom of Information (FOI) request at the centre of the dispute asked for a detailed breakdown of expenses for 14 MPs and former MPs. The Hansard Society said the ruling was necessary for ensuring parliamentary democracy and accountability.<sup>431</sup>

The Criminal Justice and Immigration Act, 2008, which introduced wide changes including some that were welcomed by human rights groups, was granted Royal Assent on 8 May 2008. Some of these changes included the expiry of cautions (which are warnings given by the police in cases where there is sufficient evidence to take a case to trial and where the suspect has admitted guilt, in lieu of taking the case to court) i.e. they are no longer active for life; and the introduction of a mandatory annual review for the controversial Anti-Social Behaviour Orders (ASBOs). These are issued by Magistrate's Courts and prohibit certain behaviour on the part of the defendant aimed at preventing him or her from repeating the original anti-social behaviour.)<sup>432</sup> Other changes included the abolition of offences of blasphemy and blasphemous libel after a proposal made by Liberal Democrat Minister Evan Harris called the laws "ancient, discriminatory, unnecessary, illiberal and non-human rights compliant".<sup>433</sup>

Other changes have, however, been criticised by human rights groups. Under the Act, the government has been granted the mandate to impose a special immigration status for terrorists and serious criminals and their family members (including children), who cannot currently be removed from the UK for legal reasons. This allows the government to impose certain restrictions upon the person, including restrictions on residence and employment.<sup>434</sup> Violent Offender Orders and Youth Rehabilitation Orders have also been introduced, continuing the trend of the creation of civil orders (Anti-Social Behaviour Orders introduced under the Crime and Disorder Act, 1998, Control Orders and Serious Crime Prevention Orders (SCPOs) introduced under the Serious Crimes Act, 2007). Concerns have been raised that these orders essentially constitute "legal shortcuts", wherein "punitive measures [are] dressed-up as 'preventative' to escape the fair trial" obligations that apply under Article 6 of the European Convention on Human Rights.<sup>435</sup> A Youth Conditional Caution for children

and young offenders has also been introduced by the Act. For a democratic legal system to function and provide justice, it is essential that an independent tribunal, namely the judiciary, should sentence and impose punishment, thus preventing bias from prosecutorial authorities.<sup>436</sup> Furthermore, special measures designed to "avoid criminalising and penalising a child" are noted in the UN Guidelines on the Prevention of Child Delinquency which clearly state that "in the predominant opinion of experts, labelling a young person as 'deviant', 'delinquent' or 'pre-delinquent' often contributes to the development of a consistent pattern of undesirable behaviour by young persons".<sup>437</sup> A statutory ban on striking by prison officers has been reintroduced. Whilst a Ministry of Justice spokeswoman has made assurances that the provisions introduced were in line with recommendations issued by the Joint Committee on Human Rights, the Prison Officers Association (POA) has raised concerns and lodged a complaint at the European Court of Human Rights. <sup>438</sup>

Whilst the UK's record on protecting freedom of expression remains good, it was reported that under the above mentioned Criminal Justice and Immigration Act, a new offence of possession of extreme pornographic images has also been introduced.<sup>439</sup> Allegedly, while taking into account the Internet age where websites based outside the UK are accessed from within the UK, criminal responsibility for extreme pornography has been shifted from the producer of the pornography to the consumer in possession of it. This legislation has been sharply criticised for being rushed through Parliament as part of the wider Bill, and has been condemned for being too vague and criminalising those who enjoy "viewing" unconventional sex.<sup>440</sup> In this context, it is noteworthy to quote Lord Wallace of Tankerness' comment during a House of Lords debate on the legislation: "If no sexual offence is being committed it seems very odd indeed that there should be an offence for having an image of something which was not an offence".<sup>441</sup> The forthcoming draft Communications Data Bill contains proposals to create a database of all forms of communication traffic for surveillance purposes. The Bill would force Internet and telephone companies to keep full details of customer activity for at least one year, with the police, security services and potentially government agencies throughout Europe expected to be given access to the information if allowed by the courts. Whilst the government currently keeps records of phone calls and text messages for a year, the new Bill will extend this mandate to include records of Internet use, emails and voice-over-Internet calls.<sup>442</sup> A Home Office spokesperson has described the measures as a "crucial tool" for protecting national security and preventing crime.<sup>443</sup> However, the Information Commission, an independent authority set up to protect personal information, said the database "would give us serious concerns and may well be a step too far" and expressed doubts that "such a measure can be justified, or is proportionate or desirable".<sup>444</sup> This draft legislation follows a disastrous year of loss of data by the UK government, which does little to instil confidence in the safety of the information to be held on the database. As of October 2007, there were 4.2 million CCTV cameras in operation in the UK, making it the most monitored country in Europe.<sup>445</sup> Furthermore, the National DNA database (which held 3.6 million people's DNA in March 2007, the largest such database in the world) has come under attack over the last year as it contains DNA records of those who have not been convicted of any crime.<sup>446</sup> Whilst the government went about tightening surveillance, creating large databases of information and imposing harsh measures on suspected foreigners in the name of security, on 11 June 2008 it was reported that top secret files relating to terrorist activities were lost on a public train by a civil servant.<sup>447</sup> The Cabinet Minister acknowledged that it was a serious breach of security and the opposition called it one in a "long line of serious breaches of security".<sup>448</sup>

#### 3.2 Compliance with the Pledge

In its pre-election pledge, the UK made a commitment to work for human rights internationally. It also pledged to "engage business as a positive force for the promotion of human rights through [...] Corporate Social Responsibility". Despite this, the UK's policy of transferring detainees to third countries, its arms export policy and the activities of UK-based multinational corporations continue to infringe human rights.

The UK pledged to uphold the highest standard of human rights domestically, however the country's counterterrorism policies and security measures have been found to infringe human rights domestically. The UK also pledged commitment to the protection of children's rights. However, some measures introduced in the Criminal Justice and Immigration Act, 2008 do not seem to be in keeping with this promise.

# 1. Background

#### 1.1 Context

Formerly Northern Rhodesia, Zambia became independent in 1964. At independence, the country had an abundance of copper resources and significant economic potential. By the 1970s, Zambia's support for nationalist movements in Rhodesia (now Zimbabwe), South Africa, Angola and Mozambique led to tensions and the closure of its borders. In parallel, world copper markets slumped, with a devastating effect on an increasingly politically insular Zambia. By the mid-1990s Zambia was burdened with an increasing rate of per capita foreign debt and associated socio-economic problems. In recent years, it has been on the verge of a food crisis and the country has received significant debt relief. From 1972 to 1991, Zambia endured a long period of single party rule, which ended with the adoption of the 1991 Constitution. Corruption has proved to be a major problem in Zambia after its democratic resurrection. The country faced a failed coup in 1997. Coup leaders used corruption of the then regime as a pretext to justify their actions. Following a change of leadership after the 2002 elections, there has been a massive anti-corruption drive mainly targeting the previous regime.

#### **1.2 UN Treaties**

Zambia is party to the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC). Zambia is not yet a party to the Convention on the Protection of the Rights of All Migrants Workers (CMW), the Second Optional Protocol to ICCPR, the Optional Protocol to CEDAW, the Optional Protocols to CRC.

### **1.3 UN Reporting History**

Zambia has fulfilled most of its reporting obligations under international treaties.

The country does not have any reports due under CAT, ICCPR, CERD, ICESCR, or CRC. Zambia has completed four rounds of reporting under CEDAW, but owes one report for 2002. Zambia has not extended an open invitation to the UN Human Rights Council's Special Procedures.

#### 1.4 UN Voting Patterns and Performance at the Council

At the Sixth Session of the Council, on 26 September 2007, Zambia welcomed the draft resolution extending the mandate of the Independent Expert on the human rights situation in Burundi and co-sponsored by a number of other African states. It supported the request for renewing the mandate.

At the Sixth Session of the Council, on 13 December 2007, Zambia supported the extension of the mandate of the Independent Expert on the human rights situation in Liberia. Zambia stated that it was co-sponsoring the resolution.

On 14 December 2007, Zambia reiterated the importance of extending the mandate of the Special Rapporteur on the situation of human rights in the Sudan. Zambia voted in favour of the draft on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

## 2. Pledge

### 2.1 Context to election to the Council

Zambia was one of 13 African countries that contested the May 2006 elections to the Council. The number of candidates was the same as the number of seats reserved for Africa. The election results were pre-determined. Zambia came second among the African group with 182 votes.

#### 2.2 Pledge made

In its pre-election pledge Zambia committed to respecting provisions of protocols relating to human rights in both the regional and global spheres. It also promised to "accelerate the process" of signing the two Optional Protocols to CRC and the Optional Protocol to CEDAW. The country committed to submit on time its reports to the treaty bodies. Finally, Zambia highlighted its important role in the liberation struggles in Africa and its continuous assistance to countries emerging from conflict in the sub-region.

# 3. Compliance

#### 3.1 Human Rights in the Past Year

The human rights situation in Zambia has seen a few positive developments in terms of legislation, but it is still in dire shape overall.

The late President Levy Mwanawasa made a pledge this year to introduce a law on gender-based violence within the present term of Parliament. According to a report on 27 November 2007, his Justice Minister was in the process of drafting the bill and countrywide consultations were being held to garner support and input from a wide cross section of the population. According to the President, the Bill was a part of his government's plan to accelerate domestication of the Convention on the Elimination of all Forms of Discrimination Against Women. The report also indicated that there was some scepticism from a civil society member, who called for less rhetoric and more action.<sup>449</sup> The Committee Against Torture (CAT) has also pointed out that whilst legislation was underway to address violence against women, widespread violations including rape and domestic violence continue to take place. Furthermore, the discrepancy between customary and statutory law was highlighted, and cited as a key problem in implementing legislation.<sup>450</sup> The lack of gender equality in Zambia, besides being a threat to national integrity and pride, as President Mwanawasa put it,<sup>451</sup> is seriously hampering the fight against HIV/AIDS.<sup>452</sup> Whilst Zambia's plan to dramatically increase the distribution of anti-retroviral drugs is certainly ambitious and laudable, a report by Human Rights Watch has exposed the negative effect of existing gender inequality on the government's goals to achieve universal anti-retroviral access by 2010. A lack of property rights, a societal preference for certain discriminatory customary inheritance laws over statutory law and endemic domestic violence all play a role in keeping women from gaining adequate access to anti-retroviral drugs, whether or not they are made available by the government.<sup>453</sup>

The media has reportedly experienced harassment and curbs at the hands of certain local government officials. On 30 November 2007, a report noted that the Zambian Ministry of Information and Broadcasting Services had banned a call-in radio show for its "alleged unprofessional handling of calls". A spokesperson for a media watchdog working in the Southern African region, MISA, said that the ban was to "prevent Radio Lyambai listeners from expressing their views on critical social, economic and developmental issues in Western Province. It is, therefore, an unforgivable attack on the Zambian Constitution's guarantee of freedom of expression".<sup>454</sup> On 10 January 2008, it was reported that the ban was extended indefinitely, prompting the station manager to allege that the government banned the call-in show to stem criticism of an influential local chief.<sup>455</sup>

The Minister of Information and Broadcasting Services, Mike Mlongoti, has allegedly shown flagrant disregard for the principle of freedom of expression on a few occasions. In June 2007, a report indicated that the minister threatened to shut down a radio station for airing an hour-long interview with the President of one of Zambia's largest opposition parties. Mr. Mlongoti denies the claim.<sup>456</sup> In July, it was reported that the minister called threats against the media "justified" in some cases.<sup>457</sup> In September 2007 it was reported that in a training session for two state-owned newspapers he told incoming recruits that it was unacceptable for journalists working for state-owned newspapers to criticise the government and insinuated that they might lose their jobs if they criticised him directly.<sup>458</sup> A law forbidding anyone from insulting the President, with a maximum sentence of three years in prison, was called into question by a January 2008 Supreme Court ruling. The ruling rejected a deportation order that would have seen a British writer deported from Zambia for writing a satirical piece about the President in 2004.<sup>459</sup> President Mwanawasa was sharply criticised in October 2007, for trying to silence dissent towards his plan for constitutional review by threatening his opposition, who were to hold a rally against the plan, with charges of treason. The President's plans to hold a national conference to reach a national consensus on Zambia's first post-independence Constitution have been derailed by criticisms that the conference will be heavily in his favour.460

The status of capital punishment remains a contentious issue in Zambia. President Mwanawasa has objected to capital punishment and instituted a moratorium on the death penalty until 2011. He has reportedly said that he will never sign a death warrant whilst in office and has openly condemned the practice. In August 2007, the President commuted the sentences of 97 Zambian prisoners on death row to life sentences.<sup>461</sup>

However, the Constitutional Review Commission recommended in 2005, that Zambia retain the death penalty. The recent Supreme Court judgement on an appeal from a case initiated in 2000, ruled that capital punishment was not in contradiction with the Zambian Constitution, a ruling which activists say was a tacit certification of the use of the death penalty.<sup>462</sup> According to the Zambian delegation reporting to the Human Rights Committee at UNHCHR, the death penalty is generally favoured by Zambian citizens, a fact which has reportedly been confirmed in referendums.<sup>463</sup> Activist groups have called upon the government to launch a national education campaign on capital punishment to inform the citizenship during this time of constitutional review and set the stage for a referendum on the issue.<sup>464</sup>

In May 2006, the President admitted that violent convicts were regularly sexually abusing younger inmates in the country's prisons. He called on the prison authorities to stop the abuse.<sup>465</sup> Two weeks later, a report indicated that the Commissioner of Prisons had been sacked and replaced by his deputy.<sup>466</sup> According to CAT, concerns on detention facilities include severe overcrowding of prisons, poor physical conditions in detention centres and the lack of health, hygiene and adequate food. Also, while citing improvements in legislation introduced by the Prisons Act of 2004, access to health care in prisons remains contentious, especially given the high prevalence of diseases such as HIV/AIDS and tuberculosis perpetuated by the lack of sanitation and problems of overcrowding.<sup>467</sup> Violations perpetrated by law enforcement officials also continue to go unchecked. Many factors have been cited as critical: the lack of a proper definition of torture in local legislation,<sup>468</sup> the lack of absolute prohibition of torture,<sup>469</sup> failure to provide fundamental safeguards in legislation,<sup>470</sup> the function of prosecution solely resting in the hands of the police,<sup>471</sup> and the lack of appropriate training and awareness of best practices, standards and protocols.<sup>472</sup>

Civil society is concerned about a proposed Bill, which was being debated in Parliament in July 2007. The government reportedly said that the Non-Governmental Organisation Bill is a part of its attempt "to enhance transparency and accountability among civil society groups", but civil society believes that it will be a vehicle to regulate their activities and clamp down on political dissent. Government spokesperson, Mike Mlongoti, reportedly said, referring to NGOs, that "it is necessary to have a legal framework to regulate their conduct, because some of them seem to have been set up specifically to oppose the government in everything".<sup>473</sup> The Bill would force NGOs to register every year, would give the government expanded powers to suspend NGOs, and would also convene a board to oversee NGOs and draft a code of conduct for civil society.<sup>474</sup> Lee Habasonda, director of the Southern African Centre for Constructive

Resolution of Disputes [SACCORD], a human rights and good governance watchdog had this to say about the proposed bill: "This sends very wrong signals and threatens the existence of NGOs, in that if the board is to be directly under the Minister of Home Affairs, then it means this same board will be deregistering, at will, any NGO whose style the government does not like."<sup>475</sup> According to a media report in August 2007, the bill was reportedly deferred because of domestic and international concern.

In August 2007, Lusaka was host to the 2007 Southern Africa Development Community Summit. Reports indicated that 40 Zimbabwean human rights advocates were detained overnight at the border as they tried to enter Zambia to participate in civil society events around the Summit. They were later deported back to Zimbabwe, after immigration officials reportedly received orders from "high offices in Lusaka" that they were not to be let into the country.<sup>476</sup> Zambian Permanent Secretary in the Home Affairs Ministry, Peter Mumba, reportedly said that the activists were arrested for trying to enter the country with the intention of protesting at the Summit. Zambian civil society was also banned from holding a peaceful demonstration around the Summit meetings, a restriction that South Africa-based international civil society group, CIVICUS, called "a blatant and unnecessary restriction on freedom of assembly".<sup>477</sup>

During July 2007, the Human Rights Committee (HRC) at the United Nations reviewed Zambia's third report on its progress in implementing the International Covenant on Civil and Political Rights. The Committee asked questions and made comments on a number of issues, including the overcrowding of prisons, treatment of homosexuals, police abuse, and gender-based violence. The Chairperson of the Committee, in his preliminary concluding observations, noted that many customary laws and traditions were inconsistent with the principles of the Covenant. He was also concerned that Zambia's Constitution failed to specify that the rights found within the ICCPR were non-derogable, which found it in direct contradiction with the Covenant.<sup>478</sup> Furthermore, it was reported that alongside discrepancies between customs and statutory law, the Human Rights Committee found that international treaties were yet to be incorporated in domestic legislation, and called for the immediate implementation of those mechanisms ratified by Zambia.<sup>479</sup>

# Compliance

In its pre-election pledge, Zambia committed to respecting provisions of protocols relating to human rights in both the regional and global spheres. However, at home, important human rights issues such as media freedom, civil society freedom, access to justice deficiencies and legal deficiencies continue to jeopardize Zambia's human rights record.

In its pledge Zambia also promised to "accelerate the process" of signing the two Optional Protocols to CRC and the Optional Protocol to CEDAW. However, this acceleration is yet to fructify. Furthermore Zambia also promised to submit its reports on time to the treaty bodies. Despite this, Zambia still has one report due under CEDAW.

In its pledge, Zambia highlighted its important role in the liberation struggles in Africa and its continuous assistance to countries emerging from conflict in the sub-region. This historic role played by Zambia in the past seems to have been tarnished by allegations of detention and deportation of Zimbabwean human rights activists prior to the SADC Summit last year.

## **Endnotes**

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- <sup>4</sup> Human Rights Watch "The Torture of Tasneem Khalil How the Bangladesh Military Abuses Its Power under the State of Emergency" (February 2008) p. 4.
- <sup>5</sup> Supra at Note 1, p. 8, section 19.
- <sup>6</sup> Refer Section 10, Emergency Power Rules (2007).
- <sup>7</sup> Supra at Note 3.
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- <sup>25</sup> Supra at Note 4, Section II.
- <sup>26</sup> Ibid at Note 8.
- <sup>27</sup> Supra at Note 1, p. 19, section 78.
- <sup>28</sup> Human Rights Watch "Judge, Jury, and Executioner Torture and Extrajudicial Killings by Bangladesh's Elite Security Force" (December 2006) p. 3.
- <sup>29</sup> Supra at Note 8, p. 2.
- <sup>30</sup> Supra at Note 1, pp. 17-19, sections 73–86.
- <sup>31</sup> Asian Human Rights Commission "Man arrested over false charges dies in police custody" (12 December 2007) at http://www.ahrchk.net/ua/mainfile.php/2007/2694/l (last accessed on 29 July 2008).
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# Special Feature: Easier Said than Done

The Situation of Human Rights Defenders and Impunity in the Commonwealth Members of the UN Human Rights Council



# The Situation of Human Rights Defenders and Impunity in the Commonwealth Members of the UN Human Rights Council

The practical realisation of human rights must include the struggle to overcome a culture of impunity. Systemic impunity threatens the very basis of the modern idea of a state - a state's duty and ability to uphold the rule of law. Huzman Rights Defenders (HRDs) are at the forefront of this struggle.

In the thirteen countries reviewed in this report, the situation of HRDs and the space available to them varies greatly. In some countries, HRDs' work is criminalised by a legal arsenal that is used to quell their voices. The constitutional and legal safeguards are at times deliberately infringed to limit HRDs' scope of action; here degrees of systematic impunity jeopardise the rule of law and HRDs' work. In such countries, systemic impunity is often the result of under-resourced justice systems or government-sanctioned/endorsed, persistent violations of the rule of law and the due process of justice. The Commonwealth has the potential to enhance its member states' commitments in this regard. The Commonwealth bridges the north-south divide through a set of common values, such as democracy and the rule of law. With active intervention via Commonwealth fora alongside an organisational and constitutional structure favouring the space for HRDs, its members are in a good position for developing model legislation and practical implementation measures for the whole UN membership, particularly the UNHRC.

#### **Human Rights Defenders**

Any individual or association of individuals who strives peacefully on behalf of others towards the protection and realisation of universally recognised human rights and fundamental freedoms can be considered a HRD.<sup>1</sup> Whilst it is the state's responsibility to provide legal protection for human rights defenders,<sup>2</sup> a number of international and regional legal sources and instruments have been developed in order to shield defenders from state and non-state infringements. The UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms affirms that:<sup>3</sup>

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

The Declaration states that any individual or association of individuals who strives peacefully towards the protection and realisation of universally recognized human rights and fundamental freedoms is to be considered a human rights defender. Of critical importance is the fact that the declaration defines HRDs solely in terms of actions and avoids defining them on the basis of association or political affiliation. Whilst not legally binding, the UN General Assembly Resolution was adopted by consensus, showing the commitment of the international community to the work and the protection of HRDs. Nevertheless, the state remains the prime actor responsible for the protection of human rights and fundamental freedoms and those striving for their realisation. The Declaration highlights the importance of NGOs for the protection of human rights. The UN Declaration repeats that everyone has the right to obtain and possess information regarding human rights discuss rights issues and express an opinion about the observance of human rights violations and reaffirms the right to complain about official conduct.<sup>4</sup> The international document is adapted to the working reality of many HRDs: it aims to protect the operative mechanisms for human rights defenders<sup>5</sup> and to shield them from hostile state action.<sup>6</sup>

At the international level, the Special Representative of the Secretary-General on Human Rights Defenders' primary role is to highlight the situation of HRDs and is considered one of the most effective complaint mechanisms (Special Procedures) in the international human rights protection system.<sup>7</sup> HRDs may submit

allegations of violations of their rights to the Special Rapporteur, who will then seek to investigate and clarify the claim with the concerned government. It is the international attention that the Special Procedures bring to specific cases that often shields HRDs from hostile state or non-state infringements. Investigations by the Special Rapporteur have resulted in tangible outcomes for HRDs, such as their release from detention and the reduction in the intensity of threats and attacks. At the Commonwealth level, the intergovernmental grouping committed itself in the Harare Declaration of 1991 to the protection of human rights.<sup>8</sup> It does not have a specialised HRD programme, nor specific standards and conventions for their protection. The Commonwealth has, however, proven itself to be more useful at top-level human rights advocacy and in the promotion of existing human rights standards. The Human Rights Unit within the Commonwealth Secretariat is tasked with raising awareness about human rights issues. It is mandated to assist Commonwealth governments with implementation of international human rights instruments and with institution building. Following the UN Declaration on Defenders and the work of the Special Rapporteur, the Commonwealth Secretariat and the Commonwealth Foundation conducted several workshops to create an interface between Commonwealth governments and civil society on human rights issues and develop concrete recommendations for all stakeholders on improvements to the situation of HRDs. Despite the Commonwealth having taken measures to protect HRDs, policy options have yet to be tapped.

A number of regional human rights conventions provide a certain degree of recognition of HRDs. Whilst the European Convention on Human Rights does not specifically define the term "human rights defender", it protects all human rights and fundamental freedoms enshrined in universal human rights conventions. The European Court of Human Rights, despite its overwhelming caseload, has provided an effective remedy for the victims of human rights violations. Recently, the Council of Europe put HRDs on its agenda, conducting an evaluation of the situation of HRDs among its member states<sup>9</sup> and adopted recommendations for members on the protection of HRDs.<sup>10</sup> During 2004, the EU published its guidelines on HRDs and instigated a biannual review process on its implementation.<sup>11</sup> The African Commission on Human and People's Rights installed a Special Rapporteur on Human Rights Defenders in 2004.<sup>12</sup> The Rapporteur is tasked with monitoring the situation of HRDs in African countries, to act upon information of violations, to submit reports to the Commission and to raise awareness and promote the UN Declaration on Human Rights Defenders.<sup>13</sup> However, the Special Rapporteur lacks a complaint mechanism comparable to the UN Special Representative of the Secretary-General on Human Rights Defenders. And, in the Americas, the human rights protection system is comparatively well developed.<sup>14</sup> The Inter-American Commission accepts complaints from individuals about human rights violations by member states. The Commission for Human Rights recognised the importance of HRDs in its 1998 report and has since established a Human Rights Defenders Unit in its secretariat.<sup>15</sup> The Unit coordinates activities and conducts country visits. Nevertheless, despite the difficult situation of HRDs in some American states, no Special Procedure for the protection of HRDs is in place in the inter-American human rights system.

National laws provide the legal framework for the promotion and protection of human rights and its defenders. Human rights and fundamental freedoms are usually enshrined in the constitution, as the state's highest values. Due to the fact that the protection and realisation of human rights by state agencies are not always comprehensive, National Human Rights Institutions (NHRI) are supposed to monitor the state's compliance with its human rights commitments. NHRIs have been a part of government human rights frameworks since the Economic and Social Council suggested member states set up national human rights groups to collaborate with the UN Commission on Human Rights. A standard setting process from the 1960s led to the Paris Principles of 1978, and the updated set in 1991. Following the Principles, the role of national institutions is to provide information and education about human rights, review the acts of the three branches of government and to assist the government in its activities in accordance with the state's international human rights obligations. In order to protect its independence, the institution must be well resourced and its members appointed on a stable and predictable basis.<sup>16</sup> NHRIs are usually created through an act of parliament or executive decree and form part of the state's administration. The institution may act through recommendations and legal opinions. An important function is to receive and investigate human rights complaints from individuals and groups. NHRIs would normally have the power to obtain information on specific cases under its investigation. This instrument is a valuable tool for HRDs to raise attention to cases of alleged rights violations and provide a mechanism to

shield victims from further violations or to demand remedy for wrongful acts by state agents. NHRI can and should play an important role in shielding HRDs and their activities from state infringement.<sup>17</sup>

#### Human Rights Defenders are Perceived as a Threat by State and Non-State Actors, Resulting in an Overexposed Position

In 2006, the Observatory, a joint monitoring organisation for HRDs, registered over 1,300 cases of violation of defenders' rights. HRDs are exposed to repression ranging from torture and killings to threats and administrative obstacles imposed by state and non-state actors.

#### The Threat of Dissent, Opposition and Reporting

Governments may choose direct or indirect means of repression of defenders. Direct repressions are often perpetrated by members of the intelligence forces, military or the police, and can sometimes restrict defenders' access to an effective judiciary. Governments often resort to indirect means when opting to suppress the work of HRDs. More subtle forms of state repression involve state inaction and consent when defenders' rights are violated by non-state actors such as paramilitary groups or militant landowners, potentially encouraged by labelling defenders "terrorists" or "enemies of the state". A recent trend has been the use of legislation to quell the rights and freedoms that allow civil society to operate effectively. Laws and directives are now being used by certain countries to criminalise the activities of defenders through the use of loosely worded catch-all laws that leave human rights activists in uncertainty about the legal consequences of their actions and allow unpredictable government reaction. Governments should recognise that even though criticism and debate might hurt state sentiments in the short run, free expression and independence of mind is a tested way to guarantee human rights and plurality of opinions in the long run.

#### **Civil Society Space: Prerequisite for Human Rights Defenders**

A vibrant civil society is crucial for human rights protection and for a dynamic democracy. It allows citizens to express their identity and pursue civic interests. Such an environment protects defenders from incursions into their activities and threat to their physical integrity while allowing defenders to continue their work. Civil society space is shaped by the laws that regulate civil society, but also by the implementation through government directives, bureaucracy and the efficiency of public offices. The official attitude towards civil society space in the Commonwealth varies widely, does the kind and quality of regulation affecting civil society organisations.<sup>18</sup> Particularly in the climate of fear of terrorism, civil society actors have often come under unsubstantiated allegations of supporting terrorist activities. This has resulted in stricter government control over civil society.<sup>19</sup>

HRDs operate in several different fields of work and have specific needs for protection and facilitation. However, some prerequisites for effective and fear-free human rights work can be abstracted. The individual rights dimension of civil society space enables human rights activists and society at large to formulate grievances and demand their betterment without fear of repercussions. The collective rights dimension focuses on the available space of civil society organisations. The activities of HRDs, as well as their physical integrity, should be protected by constitutional guarantees and the rule of law. Individual HRDs require the protection of the freedom of speech, as they raise awareness about human rights violations. In order to provide legal advice to victims, a functioning legal (appeal) system and the protection of the right to ones profession is required. HRDs' operations often include media advocacy, rights awareness trainings and peaceful protests, protected by the freedom of assembly, expression and thought, as provided through constitutional guarantees and the International Covenant on Civil and Political Rights. Human rights violations, including persistent corruption and a culture of impunity, are systemic failures and require systemic and organised advocacy. Defenders are often exposed to violations of their own rights, while attention raised by an organised movement can provide a certain degree of shelter. Human rights activists are therefore dependent on the freedom of association to organise themselves to lobby for systemic changes and protection. Despite the fact that the activities of HRDs should be covered by constitutional guarantees, in some Commonwealth countries, unspecific catch-all anti-terrorism or extremist legislation is introduced, whose implementation by the executive and interpretation by the judiciary denies defenders their rights. Unspecific laws make administrative decisions unpredictable and leave HRDs at the bureaucrat's or police's mercy. In some Commonwealth countries, loosely worded legislation sanctioning arbitrary detentions are being abused against defenders, whilst in others, dissenting voices in the media walk a fine line between allowed criticism of or opposition to the government, and punishment under national security or emergency laws. The scope of action for human rights organisations is defined by constitutional guarantees such as the freedom of expression, association and assembly, parallel to the case of the individual, but organisations also face a range of regulations affecting their work and performance while exposing them to the state's mercy. In some Commonwealth countries, NGOs fall under a comprehensive NGO Act, regulating all aspects of the organisation's operations, but in many cases NGOs fall under a multitude of regulations, which might be contradictory, outdated and force NGOs to allocate scarce resources on administrative processes.<sup>20</sup> NGOs regularly have to deal with rules and regulation on registration and termination, financing and accountability. Rules on registration and termination of NGOs are a vital issue, as they represent a way for people's movements to formalise and legalise, which is essential for funding and professional functioning. Often, the process of registration is time and resource-consuming, derailing some initiatives from formalisation and delaying the formation of new NGOs. Extensive and arbitrary powers of termination and interference in internal matters discourage NGOs from raising the government's attention through criticism and contradiction, hence self-censoring its scope of action. Another vital issue defining the scope of action for NGOs is financing, fundraising and taxation, where restrictions from tax exemption and on the availability and use of domestic and foreign funding pose a challenge to the existence and proper working of human rights NGOs. Sometimes, government regulation of NGO financing is misused to quell the work or criticism by NGOs. Draconian security regulations and emergency measures limit the civil society space for the individual defender as much as for an NGO and restrict them from working effectively. An unstable security situation and a culture of impunity discourage civil society engagement and often result in violations of defenders own rights.

#### Civil Society Space in the Commonwealth Countries under Review

Civil society space and the space available for HRDs is realised to varying degrees in the thirteen Commonwealth countries that are currently members of the UN Human Rights Council. An increasingly common trend, reinforced in the context of a "war against terrorism", is the criminalisation of activities of civil society actors. Such criminalisation may take different forms. While the freedom of expression for the media in the thirteen countries is generally respected, exceptions are alarming. In Sri Lanka, the media is caught in the internal conflict, freedom of expression is heavily restricted by all warring sides and the physical integrity of media workers repeatedly violated. Free speech, involving government criticism, is frequently limited by arbitrary application of libel laws and open threats (as seen in Fiji, Bangladesh, Cameroon, Malaysia, Nigeria, Pakistan and Zambia). In some cases, the laws that concern the legal status and obligations of civil society organisations (CSO) are unspecific, at times not being reviewed for decades. In some instances, loosely worded anti-terrorism and anti-extremism legislation is being as a legal ground to silence legitimate peaceful dissent (in Pakistan and Sri Lanka). In other cases, proposed anti-terrorism legislation burdens civil society organisations with additional administrative burdens (UK). Anti-terrorism legislation leads increasingly to difficulties for CSOs to obtain and freely use foreign funding and donations, particularly important for sensitive issues like human rights (in Bangladesh, India, Nigeria and Sri Lanka). In 2007, State of Emergency was enforced in some of the thirteen states. Restricted freedoms of expression, association and assembly negatively affected civil society space. Security forces were given additional competences and exempted from judicial supervision, resulting in cases of impunity (in Bangladesh, Pakistan and Sri Lanka). Homophobic provisions in many

Commonwealth country penal codes has resulted in imprisonment of actual or perceived LGBT people.

Many of the thirteen countries under review have a vibrant civil society scene with a large number of organisations active in a wide range of fields. The work of CSOs is hampered to different degrees by those laws, regulations and their implementation that govern the sector. Inappropriate laws and excessive bureaucracy pose an administrative challenge to civil society activists, discouraging civil initiatives from formalisation and professionalism of their work. Anti-terrorism legislation is used to restrict civil liberties affecting civil society space and to impose tougher regulations on CSOs.

#### Impunity: A Threat to Civil Society Space

Civil society space gives HRDs the environment to effectively work, without having to fear repercussions. Despite the fact that the 12 Commonwealth countries who got elected to the UN Human Rights Council are obligated to uphold the *highest standards* for the protection of human rights, including the rule of law, varying degrees of impunity threaten the space in which human rights can be realised. Impunity is at the root of massive and repeated human rights violations. Impunity constitutes a serious situation of derogation of the rule of law and has negative long-term implications for society-state relations. In terms of international law, impunity can be defined as:<sup>21</sup>

the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.

Under the rule of law, the state takes justice out of the hands of its people and exercises it on their behalf. The state's prerogative is to define a norm in consistence with its fundamental values, restrict someone's liberty on substantial suspicion of breach, try the individual in a fair trial and punish if found guilty. However, from this state prerogative of justice, it derives the duty to fulfil this role and in doing so upholding the rule of law becomes the state's prime responsibility. Impunity, the failure to bring perpetrators of crimes to justice, constitutes a state failure and arises when the state fails to meet its obligation to investigate violations, prosecute, try and punish the perpetrators, hence failing to provide effective remedies and failure to ensure reparation for the victims and prevent the violation from repetition. It is the duty of the state to provide an effective, impartial and independent justice system that upholds the citizens' rights in the face of state and non-state violations. In the case of human rights violations, the right to know becomes fundamental. In cases of violation of physical integrity, i.e. extrajudicial killings, torture, rape, abductions, or physical assault among others, effective reparation may be difficult to achieve. The right to know the truth about events and circumstances concerning the perpetration of rights violations, despite the emotional harshness for family members, is among the crucial reparations and constitutes a safeguard against repetition of violations. It is among the state's duties to provide a judicial system that guarantees the right to know for victims of human rights violations and their families.<sup>22</sup> While no justice system can avoid all cases of impunity, it is a culture of impunity that is most disturbing. A culture of impunity is the consequence of systemic dysfunction of those agents and agencies that are capacitated to uphold and enforce the rule of law. A culture of impunity is characterised by low levels of moral and factual obstacles to committing a rights violations. Such a culture is generally characterised by either an inability or failure to prosecute and thereby respect the rights of others. Society is kept in an atmosphere of fear of violations and their repetition. It loses trust in the willingness or capability of the due process of law and may result in self-censorship and disengagement. A culture of impunity may evolve through two distinct, but often interrelated grounds. Severely under-resourced justice agencies might not be able to ensure the rule of law due to lack of funding, staff, training or other resources, which may lead to an overpowering caseload and susceptibility to corruption – constituting a case in which, despite possible political and administrative will, a systemic deficit leaves perpetrators of violations uncharged. A different situation is government sanctioned impunity. In some countries, the due process of justice has been tampered with from state offices. It might be effected either through direct involvement of state agents in the process or through indirect behaviour such as the silent endorsement of justice failures, dismissal of uncomfortable personnel, appointment of sub-optimal candidates to key positions, and/or restructuring of judicial competences that favour impunity. A state sanctioned culture of impunity may also be institutionalised through State of Emergency regulations. In some instances, such regulations deny the right to challenge legislative acts in court, sometimes excluding the actions of the executive, including security forces, from judicial review for acts done in good faith. It leaves security forces unaccountable for violations undertaken and can lead to law enforcement agencies becoming mere government tools for repression of dissent. Such exemptions create an intolerable culture of impunity, threatening the very basic principles of the rule of law and the protection and promotion of human rights.

Impunity creates a negative atmosphere for civil society to operate. Uncertainty about the consequences of expressions of opinion and legitimate peaceful dissent strangles the voice of the people, the very essence of democratic, participatory rule. Impunity lifts the constitutional constraints from security forces, undermining their role as the impartial guardian of the rule of law and protector of the weak. It makes political opposition a high-risk activity, removing the checks and balances from the government. It jeopardises the independence of the press, as critical and investigative journalists are often amongst the first to be targeted and silenced (as has been demonstrated in Fiji). A culture of impunity eliminates the constitutional safeguards of civil activism and crushes the civil society space that enables HRDs to work.

#### Impunity in the Thirteen Countries under Review

A culture of impunity lies at the heart of many systemic and endemic human rights violations in the Commonwealth, including some of the thirteen countries under review. In some cases, impunity is created through under-resourcing of the judicial system. In Nigeria, as a sign of the overpowered justice system, an estimated twothirds of the prison population is in pre-trial detention, which extends to, in some cases, up to 10 years.<sup>23</sup> Twenty-eight million cases are pending before Indian courts, while vacancies at existing courts are not being filled and many additional courts are required to handle the caseload.<sup>24</sup> Considerable delay in processing cases before the system of courts, beyond also affecting the evidentiary basis for prosecution, leaves the perpetrators of violations without charge, deprives the victims of effective remedy and diminishes people's trust in the due process of justice. State-sanctioned impunity is particularly worrying, and must be addressed with the concerned government. Some governments flaw the system from the top and meddle with the due process of justice. In Bangladesh, the caretaker government installed fast track anti-corruption courts that do not comply fully with international standards. In Malaysia, outdated security laws jeopardise the due process of law.<sup>25</sup> Pakistan underwent a judicial crisis in the reporting period. Chief Justice Chaudhry, vocal advocate against torture and enforced disappearances, and other Supreme Court judges were dismissed by President Musharraf and put under house arrest, where they remained at the time of the publication of this report. The newly composed bench dutifully ruled in favour of the legitimacy of Mr. Musharraf's re-election. In Sri Lanka, political haggles led to a constitutional crisis, in which President Rajapaksa took over powers of appointments to public commissions from an independent Constitutional Council. This move undermined the independence of crucial elements of the justice system, such as the National Human Rights Commission and the supervisory Police Commission.

Any move that compromises the independence of the judiciary in favour of the executive jeopardises its power-checking role and pushes the doors open for abuse

of power. A couple of nations institutionalise impunity, either in cases of Emergencies or as part of the normal rule of law. In Bangladesh, the caretaker government declared the State of Emergency soon after being installed in January 2007. Under the Emergency Power Rules, the fundamental rights catalogue in the Constitution was suspended and security personnel cannot be held accountable for any acts committed in good faith, exempting law enforcement agencies from legal supervision. In India, the executive is in most cases exempted from legal oversight for acts in good faith, thus creating a legal black hole in the due process of administration.<sup>26</sup> Legalised and institutionalised violations of international standards regarding the protection of fundamental rights and access to fair trials are likely to result in serious and repeated human rights violations. State security and law enforcement agencies have the prerogative to use legitimate force and deprive individuals of certain degrees of fundamental freedoms. Such existential powers must remain under constant legal scrutiny and be held accountable. However, it is often the security forces that enjoy the widest degree of impunity. In Bangladesh, torture, extrajudicial killings and enforced disappearances involving security forces remain endemic and are rarely investigated. In Cameroon, cases of beatings and torture by the police without action continue to be reported. Nigeria suffers from frequent extrajudicial killings of civilians and suspected criminals by the police, often without action or investigation taken against the involved officers.<sup>27</sup> In Pakistan, unpunished torture, rampant enforced disappearances and extrajudicial killings at the hands of law enforcement personnel contributed to rising tensions and an unstable security situation.<sup>28</sup> In the prison system in South Africa, allegations of torture and ill-treatment continue to be reported, with slow investigations into the matters.<sup>29</sup> Sri Lanka experiences high levels of police impunity, with systematic and frequent torture in police stations and other detention centres, extrajudicial killings and disappearances of civilians and suspected combatants in the internal conflict.<sup>30</sup> High levels of impunity for law enforcement agencies indicates a disregard of the state's international human rights obligations, a disregard for Commonwealth values and constitutional guarantees and expresses an unwillingness of governments to enforce all human rights. HRDs are particularly vulnerable to a culture of impunity, and are often among those targeted the most severely. Critical journalism, investigating human rights violations and corruption becomes a high-risk activity in some of the countries under review. While in various countries media freedom is somewhat restricted, in some states media workers are particularly affected in their activities by impunity. In Bangladesh, the interim government outlawed provocative journalism under the Emergency Rules, inviting arbitrary treatment against media workers. Uncertainty about the application of loosely worded laws makes journalists self-censor their work. Some journalists face threats, physical assault and even torture, without credible investigations into the allegations. In Sri Lanka, media freedom is restricted and media entities became part of the internal conflict. Media workers repeatedly become targets of rights violations, including killings by all parties involved in the conflict. The fact that all too often there is no official investigation into these happenings and that none of the perpetrators are prosecuted, exposes investigative journalists to a high risk of repetition of such violations.

#### The Commonwealth's Position on Rights Defenders and the Rule of Law

The thirteen countries under review in this report have to live up to their obligations under international law and the UN system and also as member states of the Commonwealth, with its own set of values and principles. The Commonwealth Secretariat and Commonwealth Foundation have become increasingly active in recognising the work of HRDs. Both bodies have facilitated networks for defenders and also conducted studies into ways in which to improve the environment for the work of civil society, including

defenders. The Commonwealth Secretariat's Human Rights Unit (HRU) develops awareness and assistance programmes to help support human rights commitments of Commonwealth countries. Following the UN Declaration on Defenders and the work of the Special Representative, the Commonwealth Secretariat and Foundation carried out a number of regional workshops on the implementation and impact of the Declaration. The workshops were carried out in collaboration with various groups, including representatives from national human rights institutions and non-government organisations, and were aimed at creating an interface between government and human rights organisations. The workshops concluded with a number of recommendations on the way in which the Commonwealth Secretariat, national governments, non-government organisations and national human rights commissions could improve the situation of defenders. Whilst the activities of the Commonwealth Secretariat have undoubtedly improved the situation for defenders, significant steps can be made to improve the work further. Membership of the Commonwealth is conditional on a member complying with the Harare and Singapore Declarations, which include a commitment to:<sup>31</sup>

# [The] liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives.

The Harare Declaration commits the organisation and its member states to the protection of civil liberties and human rights. The failure of a legal entity to act in the margin of its capabilities to prevent future violations of these values, constitutes a breach of its present obligation to protect. Hence, the organisation and member states are not only obliged to provide protection, but also to promote the values enshrined in the Harare Declaration. The building blocks in the establishment of the Commonwealth have set out an obligation to create and protect civil society space that enables effective HRDs' work. Deliberate or consensual breaches of such obligations by Commonwealth member states all too often remain without Commonwealth level consequences, hence devaluating the principles and relieving members of rights obligations.

The Commonwealth has a number of policy options to confront breaches of its founding principles. All policy options, however, must be seen in the light of their nature and the specific constraints as intergovernmental organisations. The perceived scope of action of the Commonwealth for violations of the fundamental principles, such as the values enshrined in the Harare Declaration of 1991, is elaborated - albeit not extensively - in the Millbrook Commonwealth Action Programme of 1995.<sup>32</sup> The Action Programme is meant to safeguard and promote the principles laid down in the Harare Declaration. Whilst the Commonwealth Secretariat is asked to provide technical and structural assistance to further the values, including protection of HRDs and the promotion of the rule of law, various policy options are listed to counter serious deviations from the fundamental values. Such measures include public expressions of disapproval by the Secretary-General on behalf of the organisation, and by other member states. Measures also include appointing an envoy or group of eminent Commonwealth representatives on that matter, exclusion of the concerned state from Commonwealth meetings, promotion of bilateral sanctions of Commonwealth member states and finally exclusion from the organisation. Following the Millbrook Programme, the Commonwealth Ministerial Action Group (CMAG) was set up to continuously monitor those states, who are considered to have breached the fundamental values of democracy and constitutional rule of the Harare Principles, currently Fiji and Pakistan. A culture of impunity for human rights violations in member states constitutes a grave breach of the fundamental values of the Commonwealth and should therefore be monitored and addressed by CMAG; furthermore, suspensions of membership on grounds of grave human rights violations and impunity should be considered under its mandate.

The UN Security Council created a precedent upon declaring that the human rights situation in the then apartheid South Africa was a threat to world peace as was required by Article 39 of the UN Charter, in order to apply some of the non-consensual enforcement measures of Chapter VII of the Charter. Along the same lines, the Commonwealth should not only constantly monitor the status of democracy and constitutional rule in its member states, but increasingly the state of human rights.

## The Need for a Commonwealth Framework for the Protection of Human Rights Defenders and Addressing Impunity

Whilst the Commonwealth takes action in cases of deviations from democratic rule and promotes democracy as a desirable form of political organisation, has been reluctant to publicly and systematically address grave human rights abuses. The Commonwealth has designated strengths, being an organisation bridging the north-south divide with a set of shared values, compared to the more polarised UN fora like the Human Rights Council. Considering the importance of HRDs for the fulfilment of fundamental Commonwealth principles and the fact that systemic impunity both contradicts these principles and restricts defenders scope of action, the Commonwealth as an international organisation has particular responsibilities to take action to improve the situation on both accounts. Although the Commonwealth possesses several means of action to enhance compliance with its founding values, it does not yet use the full range of policy options available to it. In addition, it could explore the viability of realising a Commonwealth framework for proactive action and enforcement of human rights and the rule of law.

Human rights safeguards are realised to different degrees in the thirteen countries looked at in this report. The same applies to the extent to which HRDs are being allowed to operate to advance the realisation of human rights. A culture of impunity in certain countries threatens the space available to defenders and, due to their exposed position, constitutes a prime threat to the realisation of their own rights. In certain countries, grave human rights violations are being left without investigation and prosecution, depriving the victims to the rights to remedy and reparation. In other countries, rampant extrajudicial killings, abductions and enforced disappearances, systematic torture by law enforcement agencies and widespread intimidation of victims and rights activists are not investigated and/or prosecuted by the judiciary, creating an atmosphere of fear of exposure and/or allowing the repetition of such violations – effectively silencing public concerns and discontents. The Commonwealth of Nations has the potential to acquire a crucial role in enhancing the work and protection of HRDs and in enforcing constitutionality and the rule of law. Its fundamental principles, laid down most prominently in the Harare Declaration, provide it with a duty to do its utmost to uphold these values in cases of deviations in member states. The organisation cannot only take preventive action via human rights training and advocacy through its Human Rights Unit. It can also utilise the whole arsenal of policy options, that international law and Commonwealth principles enable it to. Certainly, the most valuable aspect of the Commonwealth is its ability for value formation at the top policy level, complementing ground level interventions such as human rights training for law enforcement agencies and relevant administrations. The work of HRDs is crucial for upholding human rights, and the, rule of law. Efforts of the international community to promote and protect all human rights for all globally should emphasise the role of HRDs and their space of action.

#### A Commonwealth Framework for Human Rights Defenders

A Commonwealth framework concerning the situation of HRDs and impunity would have two dimensions of action and would advance several aims. Such a framework would:

- Serve to promote and protect the cause of rights activist and would advance the Commonwealth's own fundamental values.
- Enhance member states' compliance with other international obligations based on international human rights conventions and also the UN Declaration on Human Rights Defenders.
- Coordinate the efforts of the Commonwealth Human Rights Unit in the promotion of human rights and the rule of law, and the protection aspects through enforcement of values by the Commonwealth Secretariat and member states.

- The Commonwealth could set up a Commonwealth Commission to look into ways and means for the organisation to enhance the human rights situation and ensure the rule of law.
- A High Level Review Group could evaluate the current system of enforcement of Commonwealth principles and suggest structural adjustments to enhance the system's effectiveness.
- Considering the organisations strengths and its focus on the rule of law, it would be able to take a leading role and become a model amongst the UN Members in the protection of human rights defenders and upholding the rule of law.
- In line with the Harare Declaration, the Commonwealth membership can raise the issue and vote affirmatively for procedures enabling increased participation of Civil Society within UNHRC.

# **Endnotes**

- <sup>1</sup> HRDs can be specialised NGOs, trade unions or professional associations such as media unions, or individuals, like journalists, lawyers or concerned individuals. HRDs work on a broad range of thematic issues. These range from extrajudicial killings, enforced disappearances, arbitrary detentions, police brutality, labour rights, cultural identity, to access to health care and immigrants rights. The working mode of HRDs include the documentation and publication of human rights violations, supporting victims in seeking remedies through the provision of legal aid, facilitating psychological or medical support or being active on the accountability and advocacy level, thereby influencing the legal and social framework of society.<sup>1</sup> The activities of HRDs frequently involve criticising the state and its policies, thereby putting them at risk of repercussion. For the protection and promotion of the work of HRDs, it is critical that they are recognised as such and provided protection through international, regional and national conventions and instruments.
- Refer, A/RES/53/144, Article 3: Domestic law (...) is the juridical framework (...) within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.
- Refer, A/RES/53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted on 8 March 1999, Article 1.
- <sup>4</sup> Refer, A/RES/53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted on 8 March 1999, Article 2, 5-9.
- <sup>5</sup> Particularly, Article 5 (right to assembly and association), Article 6 (disseminate information), Article 8 (access to governance), Article 9 (effective remedy for human rights violation, right to complaint, right to provide legal advice, right to communicate with international bodies).
- <sup>6</sup> Particularly, Article 11 (right to exercise of profession), Article 12 (duty of the state to protect human rights defenders).
- <sup>7</sup> Joint statement of international human rights organisations on the Review of the Special Representative's Mandate, at <a href="http://www.humanrightsfirst.info/pdf/08219-hrd-final-letter-ga.pdf">http://www.humanrightsfirst.info/pdf/08219-hrd-final-letter-ga.pdf</a> (last accessed on 10 March 2008).
- Commonwealth Secretariat, Harare Declaration, Article 9, at <u>http://www.thecommonwealth.org/shared\_asp\_files/uploadedfiles/%7B7F83FE73-6E7D-45FB-BFBC-FA519E255E72%7D\_Harare%20Declaration.pdf</u>, (last accessed on 3 March 2008).
- <sup>9</sup> Council of Europe, Colloquy "Protecting and Supporting Human Rights Defenders in Europe", 13-14 November 2006, at <u>http://www.coe.int/t/F/Droits\_de\_l%27Homme/HRDefenders\_E.asp#TopOfPage (last accessed</u> on 3 March 2008).
- <sup>10</sup> Helsinki Committee for Human Rights, Resolution of the Council of Europe of 6 February 2008, at <u>http://www.mhc.org.mk/default-en.asp?ltemID=FB211053A459D54D8715978DD5AE70BA</u> (last accessed on 3 March 2008).
- <sup>11</sup> Refer to <u>http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf</u>, (last accessed on 3 March 2008).
- <sup>12</sup> African Commission on Human and Peoples' Rights, at <u>http://www.achpr.org/english/\_info/</u> <u>hrd\_res\_appoin\_3.html</u> (last accessed on 5 March 2008).
- <sup>13</sup> African Commission on Human and Peoples' Rights, at <u>http://www.achpr.org/english/\_info/hrd\_res\_appoin\_2.html</u> (last accessed on 5 March 2008).
- <sup>14</sup> Three human rights conventions lay the basis of the American human rights system: The Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights monitor and enforce their implementation.
- <sup>15</sup> Report on the situation of Human Rights Defenders in the Americas 2006, Inter-American Commission on Human Rights, at <u>http://www.cidh.org/countryrep/Defenders/defenderschap1-4.htm#II</u> (last accessed on 5 March 2008).
- <sup>16</sup> OHCHR Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights, at <u>http://www.unhchr.ch/html/menu6/2/fs19.htm#theun</u> (last accessed on 10 March 2008).

- <sup>18</sup> For a good overview on rules and regulations affecting civil society space in the Commonwealth, refer to, Rules and Regulations Affecting Civil Society Space, Background Paper, CHRI 2005 <u>http://www.humanrightsinitiative.org/advocacy/chogm/chrf2005/rules\_regu\_affecting\_civil\_society\_space.pdf</u> (last accessed on 12 March 2008).
- <sup>19</sup> "Aid, Security and Civil Society in the Post-911 Context", Centre for Civil Society, London School of Economics, 2007, p. 1, at <u>http://www.icnl.org/knowledge/pubs/Aid%20Security%20and%20Civil%20Society%20Post%20911</u>.pdf (last accessed on 13 March 2008).

<sup>&</sup>lt;sup>17</sup> Ibid.

- <sup>20</sup> Such limitation can impact on other human rights, including those of economic rights in terms of the ability of HRDs to be able to earn a livelihood in the work that they undertake. In many instances, HRDs work voluntarily or on a pro bono basis. If earning an income their employment may not fall under a national employment act and therefore workers rights can become an issue where they have no power to negotiate or effectively form unions.
- <sup>21</sup> Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Economic and Social Council, E/CN.4/2005/102/Add.1, Principle 1. p. 6.
- <sup>22</sup> Ibid. Principle 2. The inalienable right to the truth, p. 7.
- <sup>23</sup> Amnesty International, Annual Report 2007, at <u>http://www.amnesty.org/en/region/africa/west-africa/nigeria</u> (last accessed on 17 March 2008).
- <sup>24</sup> Asian Centre for Human Rights, Stakeholders Report under the UPR, November 2007, at <u>http://www.achrweb.org/</u> <u>UN/HRC/UPR-India.html#\_ftn19</u> (last accessed on 17 March 2008).
- <sup>25</sup> Human Rights Watch, Annual Report 2008, at <u>http://hrw.org/englishwr2k8/docs/2008/01/31/malays17608.htm</u> (last accessed on 17 March 2008).
- <sup>26</sup> Ibid. at <a href="http://www.achrweb.org/UN/HRC/UPR-India.html#\_Toc183402493">http://www.achrweb.org/UN/HRC/UPR-India.html#\_Toc183402493</a> (last accessed on 17 March 2008).
- <sup>27</sup> At <u>http://www.amnesty.org/en/region/africa/west-africa/nigeria</u> (last accessed on 18 March 2008).
- Asian Centre for Human Rights, Contribution under the UPR, "Pakistan: Army as the Judge, Jury and Executioner", at <u>http://www.achrweb.org/UN/HRC/UPR-Pakistan.pdf</u> (last accessed on 17 March 2008).
- <sup>29</sup> Amnesty International, Submission to the UPR, at <u>http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ZA/</u> <u>AI\_ZAF\_UPR\_S1\_2008\_AmnestyInternational\_uprsubmission.pdf</u> (last accessed on 18 March 2008).
- <sup>30</sup> Asian Legal Resource Centre, Submission to the UPR, at <u>http://www.alrc.net/PDF/ALRC-UPR-2-006-2008-SriLanka.pdf</u> (last accessed on 18 March 2008).
- <sup>31</sup> Commonwealth Secretariat, Harare Declaration, 1991, Article 4. (citing Singapore Declaration), at <u>http://www.thecommonwealth.org/shared\_asp\_files/uploadedfiles/%7B7F83FE73-6E7D-45FB-BFBC-FA519E255E72%7D\_Harare%20Declaration.pdf</u> (last accessed on 18 March 2008).
- <sup>32</sup> Commonwealth Secretariat, Millbrook Commonwealth Action Programme on the Harare Declaration, 1995, at <u>http://www.thecommonwealth.org/Internal/20723/34458/the\_millbrook\_commonwealth\_action\_programme/</u> (last accessed on 18 March 2008).

# Recommendations

CHRI believes that the vitality and relevance of the Commonwealth can only be tested against the willingness of its member states to adhere to and promote its highest values, and the ability of its official organs to support, encourage and promote such adherence.

The promotion, protection and realisation of human rights are fundamental Commonwealth values. The findings of this report raise concerns about the value that Commonwealth member states place on their commitments to the fundamental principles and to those made at various ministerial conferences including the paramount Commonwealth Heads of Government meetings (CHOGM).

The findings also highlight once again the need for the Commonwealth to have mechanisms to monitor the progress of human rights compliance as a means of indicating their commitment to the association.

CHRI reminds all Commonwealth Council members of their solemn commitments to the United Nations to make the new Human Rights Council a strong and effective body. CHRI urges them to strengthen the Council's Special Procedures and to guarantee their independence and impartiality. CHRI also calls upon Commonwealth members to support linkages between the Special Procedures and the Universal Periodic Review mechanism. CHRI stresses that in the spirit of the people's participation required by the Harare Declaration, the Commonwealth Council members should support civil society participation in all the Council's activities.

If the Commonwealth is not to be undermined, Commonwealth members of the Council must urgently bring their stances and voting in line with their Council voluntary pledges and with their Commonwealth commitments.

# In this Context CHRI Recommends:

## 1. At the UN Human Rights Council

- CHRI calls upon the governments of Commonwealth Council members to comply with their commitments to support the UN, enshrined in the Harare Declaration, the Singapore Declaration and the Nassau Declaration, and to make the new Human Rights Council a strong and effective body. CHRI reminds Commonwealth countries that the Harare Declaration has a universal application and applies beyond Commonwealth fora, including at the Council.
- CHRI urges Commonwealth Council members to base their participation in the Council solely on human rights considerations and to abjure other considerations, which have the effect of weakening adherence to human rights, impugning and dishonouring commitments made at Commonwealth fora.

## 2. At the Commonwealth Level

- CHRI urges Commonwealth members to meet their obligation under the Harare Declaration to "focus and improve Commonwealth cooperation in these areas [human rights]" by coordinating their interventions and positions with the sole objective of upholding the promotion and protection of human rights. To that end, CHRI calls upon the Commonwealth Heads of Government to state clearly in their next CHOGM communiqué practical steps for strengthening the Commonwealth's engagement with the Council. This is a vital step to implement Heads of Government's past promises to support the UN<sup>218</sup> and to build an international consensus on human rights issues.
- CHRI urges the Heads of Government to direct the Commonwealth Secretariat to identify periodically human rights areas where a Commonwealth consensus exists.
- CHRI also recommends Heads of Government to issue clear policy directions to set up a system of intergovernmental consultations prior to each Council session to adopt common

Commonwealth positions where a consensus has been identified and/or in accordance with their commitments under the Harare Declaration.

- CHRI recommends ministerial meetings to be held responsible for following up on the holding of consultations and the adoption of common positions that further human rights promotion and compliance.
- CHRI calls for a close coordination between the Commonwealth and the Council on specific and common human rights concerns. CHRI recommends a close partnership between the Commonwealth Ministerial Action Group, the Commonwealth Secretary-General's Good Offices and the Council's country specific processes, including the Special Procedure mechanisms.
- CHRI calls upon Commonwealth Heads of Government to provide necessary resources, mandates and directions to the Human Rights Unit of the Commonwealth Secretariat to technically assist Commonwealth Members to fulfil their obligations under the Harare Declaration.
- CHRI calls upon Commonwealth Heads of Government to unequivocally welcome and support the inclusion of civil society and its involvement at the Council and in the Special Procedures. This will honour their own commitments made at several Commonwealth Heads of Government meetings, which privilege the participation of civil society in governance at home and in the international arena. CHRI calls for commonwealth states to demonstrate their commitment to such inclusiveness all across the Commonwealth Secretariat. CHRI urges in particular Commonwealth Governments to provide enhanced resources, mandates and directions to the Human Rights Unit and the Commonwealth Foundation, to ensure meaningful inclusion of civil society in all their work. CHRI urges that the progress in including civil society be benchmarked and reported on at every CHOGM.
- CHRI urges the Commonwealth Secretariat to assist countries in forging effective, transparent and civil society friendly national human rights action plans. CHRI stresses that the model national action plan being prepared by the Human Rights Unit of the Commonwealth Secretariat should include means by which to measure implementation and progress of the voluntary pledges undertaken by Commonwealth Council members.

#### 3. At the National Level

- CHRI calls on the Commonwealth members of the UN Human Rights Council to take demonstrable and quantifiable steps at home to implement their voluntary commitments to the UN and the Commonwealth.
- Recalling the spirit of public participation enshrined in the Harare Declaration and the many commitments made in the CHOGM communiqués, CHRI calls upon Commonwealth members of the Council to develop, resource and implement national human rights action plans that are inclusive of a wide range of civil society. The national action plans should include measures for the implementation of voluntary human rights pledges and commitments to the UN.
- CHRI recommends that the Commonwealth Council members should put in place credible national monitoring and oversight bodies that benchmark and report independently on their progress towards upholding the highest standards in the promotion and protection of human rights.
- CHRI calls upon Commonwealth Council members to adopt, or strengthen and implement legislation that promote human rights and public participation, in particular access to information, freedom of speech, expression and association, laws that enables citizens to effectively participate in human rights policymaking processes associated with the Council.

# Annexure I Universal Periodic Review by the UNHRC Supplement

# Ghana

Ghana's UPR occurred during the Second Session of the Working Group designed to implement the UPR mechanism between 5 and 16 May 2008.

### Members of the Troika

Netherlands, Bolivia and Sri Lanka

### Consultation

The national report states that broad consultations took place between ministries, departments and agencies of the government. Consultations also took place between independent professional institutions,<sup>1</sup> and a number of civil society organisations.<sup>2</sup> Details regarding the nature of consultations, or how the information was collated in drafting the state report are absent. Some Ghanaian civil society members complained that civil society consultations only included a small section of the Ghanaian civil society.

## **Report by the State**

The state report is divided into four parts, beginning with a brief overview of the political, legal and economic system in place, followed by a detailed section on the legislative instruments and mechanisms designed to protect and promote human rights. One chapter is dedicated to outlining Ghana's international obligations in protecting human rights, and the role that its major national human rights institutions play. Among the issues addressed are rights of women and children, civil and political rights, right to fair trial, right to health (and traditional medicines), protection of the rights of persons with disabilities, and finally protection of workers and economic rights. This is followed by a detailed account of Ghana's best practices and achievements in the field of human rights, as well as some of the initiatives introduced by the government to tackle human rights challenges including violence against women and access to justice issues. The challenges identified in the report include the elimination of "mob justice", upholding women's rights and eliminating harmful traditional practices (such as female genital mutilation or FGM, and ritual enslavement), child labour, reforming the police and prison structure, efficient management of inadequate resources, and deepening the cooperation between state institutions and civil society groups in order to increase human rights protection.

The report does not address issues such as the use of the death penalty, police brutality and impunity, corporal punishment and efforts to reduce the spread of HIV/AIDS. In general, quantitative assessments (statistical data, performance of initiatives, etc), or even examples of violations were not given in the report.

## **OHCHR** Compilation of Information from UN Human Rights Sources<sup>3</sup>

The compilation addressed a wide range of issues, and recommended that Ghana ratify the remaining human rights instruments that it has already signed and pledged to ratify.<sup>4</sup> CRC and CEDAW also noted progress made in the protection of women's and children's rights, citing measures such as the Domestic Violence Act (2007), the Human Trafficking Act (2005) and the Children's Act (1998).<sup>5</sup> Notably, Ghana has ratified the majority of core human rights instruments, relatively uncommon within the sub-region. The issues raised in the report included discrimination<sup>6</sup> and violence against women,<sup>7</sup> discrimination based on ethnicity,<sup>8</sup> child abuse,<sup>9</sup> women's access to justice,<sup>10</sup> freedom of expression,<sup>11</sup> right to social security,<sup>12</sup> and the right to education.<sup>13</sup>

## **OHCHR** Compilation of Stakeholder Submissions

Nine stakeholders made submissions to the UPR. Many positive changes were noted in the area of Ghana's commitment to ratifying international human rights instruments, and progress in the government's position on the death penalty. However, several issues raised were in symmetry with the OHCHR compilation of information from UN sources, including discrimination based on gender, female genital mutilation

(FGM), access to justice, violations in mining areas, poor detention facilities, child trafficking, child labour and corporal punishment, access to justice, right to housing, and the right to basic conditions.

While the compilation of information from UN sources and the compilation of stakeholder submissions were largely complementary in nature, the latter was more detailed and contained important statistics. For example, CHRI pointed out that lack of infrastructure aside, initiating court proceedings itself was cumbersome, given that most people cannot afford to pay for legal counsel.<sup>14</sup> Access to justice for victims, especially of sexual crimes remains an even bigger challenge. Access to justice is denied on the basis that victims cannot afford to pay for a medical report. Perpetrators are released following a constitutional provision that allows detainees to be released after a reasonable time as it takes two years on average for court proceedings to start.<sup>15</sup> Furthermore, CHRAJ noted that inordinate delays in court proceedings due to frequent unexplained adjournments and the high cost of court processes also hamper access to justice.<sup>16</sup>

#### **Interactive Dialogue**

The Ghanaian delegation took up to forty minutes out of the allotted one hour to make their presentation, which left very little time for them to respond adequately to questions posed by the 44 states that took the floor. The challenges identified in the presentation included state budget intervention for education, the lack of a policy for social protection especially designed to curb violence against women and protection of miners, human trafficking, and amendments necessary to the Constitution for upholding fair trial. The achievements that were outlined included improvements in freedom of expression, collaboration and financial support with the NHRI, collaboration with civil society (especially during the UPR), access to justice, national policy advocating traditional medicine, police reforms, right to education, and some positive steps towards protecting the rights of miners.

During the interactive debate, many critical human rights questions were raised, while some states chose to solely make welcoming statements.<sup>17</sup> The main issues raised were abolition of the death penalty,<sup>18</sup> poverty,<sup>19</sup> excessive use of police force,<sup>20</sup> rights of the child,<sup>21</sup> women's rights,<sup>22</sup> prison conditions,<sup>23</sup> efforts to combat HIV/AIDS,<sup>24</sup> right to health,<sup>25</sup> violations during mining activities,<sup>26</sup> rights of minorities,<sup>27</sup> rights of persons with disabilities,<sup>28</sup> the impact of debt,<sup>29</sup> justice,<sup>30</sup> right to food<sup>31</sup> and collaboration with civil society.<sup>32</sup>

As mentioned above, the delegation used brevity in good measure given that their presentation took up a lot of time, and therefore answered questions in large clusters. The responses were themselves general, and issues such as visits by UN Special Rapporteurs, collaboration with civil society, and minority rights were not mentioned On the whole, the delegation was generally forthcoming and even candid at times.<sup>33</sup> However, no statistics or assessments were referred to, and the delegation's responses, in general, could have been more adequate.

## Plenary<sup>34</sup>

The Plenary Session took place on 11 June 2008, with the opening statement of the delegation stressing that twenty-two of the recommendations were already accepted and that the government was considering accepting the rest of the recommendations after review. Among those not accepted were the abolishment of corporal punishment, death penalty and polygamy. The delegation stated that both corporal punishment and the death penalty were not practised, and that criminalising polygamy would infringe on the rights of citizens exercising their right to a "faith-based marriage". All eight countries that took the floor<sup>35</sup> commended Ghana on progress made on issues such as domestic violence, trafficking in persons, child labour, and education, given its various developmental challenges. Three civil society groups took the floor<sup>36</sup> and raised issues related to the death penalty,<sup>37</sup> overcrowding of prisons, reform of the judicial system, adequate housing, women's rights and the infringement of rights by mining companies with the complicity of government actors including the military. The delegation's closing statement expressed gratitude towards civil society groups for their contribution to the UPR process.

# **Endnotes**

- <sup>1</sup> These included the National African Peer Review Mechanism Governing Council, the Ghana Bar Association (GBA), the Ghana Journalist Association (GJA), and the Commission on Human Rights and Administrative Justice (CHRAJ).
- <sup>2</sup> Commonwealth Human Rights Initiative (CHRI), Ark Foundation and Amnesty International (AI).
- <sup>3</sup> A/HRC/WG.6/GHA/2, (14 April 2008).
- <sup>4</sup> CEDAW noted with concern that Ghana has not as yet ratified OP-CEDAW, in spite of a parliamentary approval as far back as 2002; CERD appreciated Ghana's pledge to recognise the competence of Article 14 (individual complaints) of ICERD; the CRC recommended that Ghana consider ratifying the Palermo Protocol.
- <sup>5</sup> See CRC/C/GHA/CO/2, para. 4. Also see UNFPA submission to UPR on Ghana, p. 1, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/GH/UNFPA\_GHA\_UPR\_S2\_2008\_UnitedNations PopulationFund\_uprsubmission.pdf; and UNICEF submission to UPR on Ghana, p. 5, available at http:// lib.ohchr.org/HRBodies/UPR/Documents/Session2/GH/UNICEF\_GHA\_UPR\_S2\_2008\_UnitedNationsChildrensFund\_ uprsubmission.pdf.
- <sup>6</sup> CEDAW, CEDAW/C/GHA/CO/5, paras. 8, 19, 20, 25-26, 29-30, 35-36; Special Rapporteur on Violence Against Women, A/HRC/7/6/Add.3, paras. 2, 32-33.
- <sup>7</sup> CEDAW, CEDAW/C/GHA/CO/5 paras. 21, 22, 23 and 24; Special Rapporteur on Violence Against Women, A/ HRC/7/6/Add.3, paras 2, 47; CRC, CRC/C/GHA/CO/2, para 45.
- <sup>8</sup> CERD, CERD/C/62/CO/4, paras 9, 10, 16.
- CRC, CRC/C/GHA/CO/2, paras. 9, 10, 25, 44, 45; Special Rapporteur on Violence Against Women, A/HRC/7/6/ Add.3, paras. 3, 47,
- <sup>10</sup> CEDAW, CEDAW/C/GHA/CO/5, para. 11, 15; Special Rapporteur on Violence Against Women, A/HRC/7/6/ Add.3, fourth paragraph of the summary, p. 2; paras 10, 80-82.
- <sup>11</sup> The Special Rapporteur on the promotion and Protection of the Right to Freedom of Opinion and Expression, E/ CN.4/2006/55/Add.1, paras. 365-366.
- <sup>12</sup> CRC, CRC/C/GHA/CO/2, paras. 40, 51, 57 and 58; CEDAW/C/GHA/CO/5, paras. 31, 34; Special Rapporteur on the Right to Food, A/HRC/7/5/Add.1, paras. 49-52; UN Habitat, "UN-Habitat Submission to UPR on Ghana", pp. 1-2, available at <u>http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/GH/UNHABITAT\_GHA\_UPR\_S2 2008 UnitedNationsHABITAT\_uprsubmission.pdf.</u>
- <sup>13</sup> CERD, CERD/C/62/CO/4, paras. 3, 19; Common Country Assessment 2004, Common Country Assessment (CCA) Ghana, 2004, pp. 14-15; CEDAW, CEDAW/C/GHA/CO/5, para. 27; UNESCO, UNESCO, EFA Global Monitoring Report 2007, Paris, 2006, p. 33.
- <sup>14</sup> The hourly rate of a senior counsel is US\$ 300, and a junior counsel is US\$ 150. While some provisions in the Constitution (Article 294 (1)) provides for free counsel for the poor, there is a clear lack in the provision of pro-bono lawyers. See, "Commonwealth Human Rights Initiative, New Delhi, India / Accra, Ghana, UPR Submission", February 2008, p. 4.
- <sup>15</sup> Ibid.
- <sup>16</sup> Commission on Human Rights and Administrative Justice, Accra, Ghana, UPR Submission, February 2008, p.4.
- <sup>17</sup> Tunisia, Mali, Philippines, Burkina Faso, Cote d'Ivoire.
- <sup>18</sup> France.
- <sup>19</sup> Senegal, Portugal.
- <sup>20</sup> China, Mexico.
- <sup>21</sup> Pakistan, Finland, Turkey, Germany, Zambia, Syria, Malaysia, Republic of Korea.
- <sup>22</sup> India, France, Chile, Tanzania, the Netherlands, Slovenia, Czech Republic, Azerbaijan, USA, Algeria, Austria, Guinea, Republic of Korea.
- 23 UK.
- <sup>24</sup> Romania, Bosnia and Herzegovina.
- <sup>25</sup> DR Congo, South Africa.
- <sup>26</sup> Germany, Brazil.
- <sup>27</sup> Romania.
- <sup>28</sup> Romania
- <sup>29</sup> China.
- <sup>30</sup> India.
- <sup>31</sup> Luxembourg.
- <sup>32</sup> Pakistan.
- <sup>33</sup> During questions posed by Malaysia in reference to child labour.
- <sup>34</sup> The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.
- <sup>35</sup> Algeria, Luxembourg, Senegal, Nigeria, Egypt, Malaysia, Uganda, India.
- <sup>36</sup> Amnesty International, Centre on Housing Rights and Evictions, Foodfirst Information and Action.
- <sup>37</sup> Amnesty International pointed out that death sentences continue to be handed down despite the moratorium on its implementation.

# India

India's UPR occurred during the First Session of the Working Group designed to implement the UPR mechanism between 7 and 18 April 2008.

# Members of the Troika

Indonesia, the Netherlands and Ghana.

# Consultation

While India maintains that broad and inclusive consultations with civil society took place prior to the State submissions, no further details were given regarding input of stakeholders, nor the incorporation of information gathered. Furthermore, several stakeholder submissions contested this claim.<sup>1</sup>

## Report by the State<sup>2</sup>

Instead of addressing deep human rights concerns such as torture, police brutality, caste, religion and gender-related violence and discrimination, the report chose to focus on a historical account of India's recent successes, wherein the main challenges cited for the realisation of human rights were the size and diversity of India's population. The first section focused on constitutional mechanisms, especially the National Human Rights Commission (NHRC) and the role of the independent judiciary in setting legal precedents. No concrete assessment of the impact of these mechanisms were made. However, national commissions dealing with vulnerable groups (women, children, elderly, disabled, minorities, scheduled castes and tribes, etc.) are dealt with in depth. Also, statistical data, assessments and other quantitative information on the implementation and performance of human rights obligations were notably missing.

# **OHCHR** Compilation of Information from UN Sources

Several key issues were highlighted in the compilation. In general, concern was expressed over India's failure to issue a standing invitation to Special Procedures of treaty bodies, the failure to ratify CAT and accede to the optional protocol of CEDAW.<sup>3</sup> The HRC expressed concerns over the impact of impunity of security forces through emergency and counter terror legislation with special mention of the Armed Forces Special Powers Act (AFSPA).<sup>4</sup> Custodial deaths, torture and ill treatment in detention facilities were also raised.<sup>5</sup> Other issues included caste-based discrimination,<sup>6</sup> gender discrimination,<sup>7</sup> violence against women<sup>8</sup> (especially Dalits) and traditional practices perpetuating such violence,<sup>9</sup> communal violence and protection of minorities<sup>10</sup> and violence against human rights defenders (HRDs).<sup>11</sup>

# **OHCHR** Compilation of Stakeholder Submissions<sup>12</sup>

Around 37 stakeholders, including the NHRC, raised issues that were largely complementary with the OCHR compilation of information from UN sources. Among the common issues raised were caste-based discrimination, discrimination against religious minorities, the use of security legislation such as the Armed Forces Special Powers Act (AFSPA)to perpetuate a climate of impunity for violations, existence of torture, custodial deaths and impunity of public authorities, communal violence and violations against Human Rights Defenders (HRDs). These issues aside, NGO submission also highlighted criminalisation of homosexual acts, violence and discrimination against women and the dire state of indigenous people denied access to state-run affirmative action programmes. Furthermore, a coalition of NGOs, the People's Forum,<sup>13</sup> also questioned the independence of the NHRC, especially given the large backlog of cases, recent controversial decisions and the quality of the report of the state under review. Also, concern was expressed by a number of stakeholders regarding India's lack of cooperation with the UN Special Procedures, and its reluctance to ratify some key treaty instruments (such as CAT).<sup>14</sup>

#### Interactive Dialogue<sup>15</sup>

Much of the content in India's country report was reflected in the presentation. Two comments deserve mention, the first one made by H.E. Ambassador Swashpawan Singh, India's Permanent Representative to the UN when he informed the Working Group that the first draft of the country report was prepared by NHRC in conjunction with a National Law School,<sup>16</sup> indicating the level of collusion between NHRC, academia and the government. Secondly, Mr. Goolam E. Vahanvati, Solicitor General of India argued firmly against CERD applying to caste-based discrimination saying it was not racial, and also stated that in his view, all Indians were "indigenous". Terrorism was also highlighted by both speakers as one of the key challenges facing the law and order situation in India.

During the interactive dialogue, 42 countries took the floor and many critical questions were raised with regard to issues such as torture, impunity and counter terror legislation,<sup>17</sup> while most other states were content discussing less controversial issues such as child labour, caste-based discrimination and harmful gender-specific traditional practices.<sup>18</sup> The Indian delegation did pick some difficult issues to answer, but these were inchoate in terms of providing responses with adequate depth and content. The key questions raised related to the ratification of CAT,<sup>19</sup> concerns impunity and related legislation (specifically, the AFSPA),<sup>20</sup> treatment and engagement of civil society,<sup>21</sup> protection of minorities and related communal violence,<sup>22</sup> caste-based discrimination,<sup>23</sup> child labour,<sup>24</sup> violence against women and related gender-discrimination and the status of women,<sup>25</sup> harmful traditional practices,<sup>26</sup> anti-conversion laws,<sup>27</sup> cooperation with special procedures of the Council,<sup>28</sup> the NHRC,<sup>29</sup> the Right to Information Act,<sup>30</sup> government and police corruption<sup>31</sup> and other issues such as criminalisation of homosexuality,<sup>32</sup> the ratification of the Convention on Enforced Disappearances<sup>33</sup> and the displacement of indigenous peoples.<sup>34</sup>

India's responses to critical human rights issues were largely brief, and mostly general in nature. When asked what concrete steps were taken towards the ratification of CAT, the delegation pointed out that the Indian Penal Code (IPC) had provisions "on the use of torture". It is noteworthy to mention that neither the IPC, nor the Constitution has provided an explicit definition for torture.<sup>35</sup> Another example was the statement that "no force in the country functions with impunity" and because there were clear guidelines for security forces that provided safeguards, there were "no violations".<sup>36</sup> Several questions targeted towards castebased discrimination and violence against Dalit women in particular were dealt with the claim that castebased discrimination was not "racial in origin".<sup>37</sup> When child labour and violence towards women were brought up by several countries, the Indian delegation chose not to respond. The Right to Information Act was applauded, and India informed the Council that steps were been taken to ratify the Convention on Enforced Disappearances. The Indian Delegation conceded that India's rapid growth posed challenges given the growing income divide, and that the creation of Special Economic Zones had caused "some conflict".<sup>38</sup>

#### Plenary<sup>39</sup>

The Plenary Session took place on 10 June 2008, wherein the state delegation called the UPR process "productive" and emphasised that implementation of the recommendations would be the second step in a continuous cycle of review. All eight states that took the floor commended India on its efforts during the process, with one exception, where India was asked to inform the Council regarding progress made on the implementation of recommendations, including those that were not acceptable.<sup>40</sup> Some of these countries noted India's efforts in implementing human rights despite the size and diversity of the nation,<sup>41</sup> and asserted that India served as a model of best practices in the region with anticipation of further progress expected.<sup>42</sup> Civil society groups voiced many concerns including discrimination stemming from India's caste system,<sup>43</sup> disappearances and torture,<sup>44</sup> killings in 1984 and 2002,<sup>45</sup> impunity,<sup>46</sup> the arrest of minorities on false charges,<sup>47</sup> banning discrimination based on sexual orientation and decriminalising same-sex activity.<sup>48</sup> The closing statement of the delegation addressed some of the issues raised, and continued to stress that the position of the Government of India regarding caste-based discrimination was that it did not equate to racism or racial-discrimination.

# Endnotes

- Refer, for example, the NGO submission of Commonwealth Human Rights Initiative (CHRI), A 1. A submission by the Peoples Forum (a nationwide coalition of 192 NGOs, also endorsed by CHRI) pointed out that no consultations took place.
- <sup>2</sup> Refer, A/HRC/WG.6/IND/.1.
- <sup>3</sup> Refer, A/HRC/WG.6/IND/2, paras 1, 2.
- <sup>4</sup> Refer, A/HRC/WG.6/IND/2, paras 16.
- <sup>5</sup> Issues raised by CWC, CEDAW, HRC, see A/HRC/WG.6/IND/2, paras 17, 18.
- <sup>6</sup> Issue raised by CERD (A/HRC/WG.6/IND/2, paras 13, 17) and HRC (A/HRC/WG.6/IND/2, para 12).
- <sup>7</sup> Issue raised by CRC, CCPR and CEDAW (A/HRC/WG.6/IND/2, para 11).
- <sup>8</sup> Issue raised by CEDAW, HRC, CERD and CRC (A/HRC/WG.6/IND/2, paras 20, 21, 22, 24, 25).
- <sup>9</sup> Refer, A/HRC/WG.6/IND/2, para 21.
- <sup>10</sup> Issue raised by CEDAW, A/HRC/WG.6/IND/2, para 23, as well as CERD (A/HRC/WG.6/IND/2, paras 24, 32).
- <sup>11</sup> Refer, A/HRC/WG.6/IND/2, para 17.
- <sup>12</sup> UPR Monitor: India, 1st Session 2008, International Service for Human Rights, p. 3, at http://www.ishr.ch/hrm/council/upr/upr 1st session 2008/upr 001 india final.pdf.
- <sup>13</sup> The Peoples Forum for UPR in India is a nation wide coalition of 192 NGOs that all contributed to a submission due before the cycle began. The report can be found at http://209.85.175.104/search?q=cache:7UruNsy4yd0J: lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/ACHR\_IND\_UPR\_S1\_2008\_AsianCentreforHumanRights etal uprsubmission.pdf+peoples+forum+for+U PR+india&hl=en&ct=clnk&cd=4&client=firefox-a
- <sup>14</sup> Asian Legal Resource Centre "Dealing with the tremendous problem of torture in India" at http://www.article2.org/ mainfile.php/0204/97/ (last accessed on 3 June 2009).
- <sup>15</sup> Apart from official OHCHR documents, two sources were used, "India's Review in the Working Group", UPR Info and "UPR Monitor: India, 1st Session 2008", International Service for Human Rights.
- <sup>16</sup> As reported by the "UPR Monitor: India, 1<sup>st</sup> Session 2008", International Service for Human Rights, p. 4, at http:// www.upr-info.org/IMG/pdf/India\_s\_review\_in\_the\_Working\_Group-2.pdf.
- <sup>17</sup> United Kingdom (UK), Canada, Belgium, Germany, Republic of Korea, Switzerland, Nigeria, Source: "India's review in the Working Group", UPR Info, p. 2, at http://www.upr-info.org/IMG/pdf/India\_s\_review\_in\_the\_Working\_Group-2.pdf.
- <sup>18</sup> Brazil, the Netherlands, Germany, Italy, United States of America (USA), China, Luxembourg and Malaysia.
- <sup>19</sup> UK, France, Mexico, Switzerland, Sweden.
- <sup>20</sup> UK, Canada, Germany, Belgium.
- <sup>21</sup> UK, Canada, Saudi Arabia.
- <sup>22</sup> UK, Saudi Arabia, Bangladesh, South Africa.
- <sup>23</sup> Canada, Singapore, Belgium, the Netherlands, Luxembourg, Germany, USA.
- <sup>24</sup> Brazil, the Netherlands, Germany, Italy, USA.
- <sup>25</sup> Brazil, China, Luxembourg, USA.
- <sup>26</sup> Malaysia, USA.
- 27 UK.
- <sup>28</sup> Latvia.
- <sup>29</sup> Russia, Bangladesh.
- <sup>30</sup> Russia, Egypt.
- 31 USA.
- <sup>32</sup> Sweden.
- <sup>33</sup> Nigeria.
- <sup>34</sup> Republic of Korea.
- <sup>35</sup> Statement by Mr Vivek Katju, Additional Secretary in the Ministry of External Affairs, See A/HRC/8/26, para 46, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A\_HRC\_8\_26\_India\_E.pdf. [After further probing, he cited the DK Basu v. State of Bengal case regarding procedures to be followed when making arrests. Curiously, the judgement does not attempt to define torture, and states clearly that ""torture" has not been defined in the Constitution or in other penal laws" (refer, para 10 of additional notes of the judgement).]
- <sup>36</sup> Statement by Mr. Goolam Vahanvati, Solicitor General of India. See A/HRC/8/26, para 15, as well as the "UPR Monitor: India Report", International Service for Human Rights, p. 5.
- <sup>37</sup> Statement by Mr. Goolam Vahanvati, Solicitor General of India. See A/HRC/8/26, para 16.
- <sup>38</sup> Refer, A/HRC/8/26, para 72.
- <sup>39</sup> The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.

- <sup>40</sup> The Netherlands specifically referred to recommendations made by its delegation, especially the ratification of ILO Conventions 138 and 182, and reviewing the reservation to Article 32 to the Convention on the Rights of the Child.
- <sup>41</sup> Nigeria, United Arab Emirates, Sri Lanka.
- <sup>42</sup> United Arab Emirates, China, Sri Lanka, Morocco, Ghana.
- <sup>43</sup> International Movement Against All Forms of Discrimination and Racism, Interfaith International.
- <sup>44</sup> International Human Rights Association of American Minorities, Interfaith International.
- <sup>45</sup> International Human Rights Association of American Minorities, International Islamic Federation of Student Organizations, Interfaith International.
- <sup>46</sup> International Islamic Federation of Student Organizations, Interfaith International.
- <sup>47</sup> International Human Rights Association of American Minorities.
- <sup>48</sup> Action Canada for Population and Development.

# **Pakistan**

Pakistan's UPR occurred during the Second Session of the Working Group designed to implement the UPR mechanism between 5 and 16 May 2008.

# Members of the Troika

Saudi Arabia, Ghana and Azerbaijan

# Consultation

The state report claimed that extensive inter-ministerial consultations occurred at both the federal and provincial level. It has also been stated that the Minister of Human Rights held consultations with several national NGOs.<sup>1</sup> However, no further information was given regarding the methodology of the consultations, or how information gathered was incorporated in the state report.

# Report by the State<sup>2</sup>

The state report contains considerable detail regarding constitutional provisions and recent legislation intending to promote and protect human rights, but fails to provide concrete evidence, quantitative data or analyses of critical human rights challenges facing the country. The first part of the report describes the constitutional structure of Pakistan, and identifies three key challenges to protecting human rights, and development in general, namely, natural disasters (the October 2005 earthquake, and the cyclone affecting Balochistan and Sindh in June 2007), the threat from terrorism, and "political transition". It also briefly justifies the emergency rule imposed between 3 November and 15 December 2007 citing the emergence of "extenuating circumstances", mainly caused by the actions of extremists and terrorists. No mention of the human rights violations that took place during this period is made anywhere in the report.

The main issues addressed in the report were women's rights (including detailed constitutional amendments and public initiatives), children's rights, legislation concerning persons with disabilities, various initiatives by the government to promote minority rights, and a brief section on Afghan refugees. The report also claims that freedom of expression in the media "does not need any elaboration". Critical issues such as custodial deaths, arbitrary detentions, torture, other abuses and a culture of impunity within the security forces, extrajudicial killings, prison conditions, violence against women and relevant lack of safeguards, ratification of key human rights instruments, and the role of civil society are also conspicuously absent from the state report.

# **OHCHR** Compilation of Information from UN Sources<sup>3</sup>

This compilation from OHCHR examined a wide range of critical issues, in general, the reluctance of Pakistan to ratify several key human rights instruments,<sup>4</sup> and a lengthy list of critical human rights concerns. Among the issues raised were arbitrary detentions,<sup>5</sup> abuses by security forces with impunity (including enforced disappearances),<sup>6</sup> extrajudicial killings,<sup>7</sup> gender discrimination,<sup>8</sup> the death penalty,<sup>9</sup> honour killings,<sup>10</sup> counterterrorism measures,<sup>11</sup> violence against women<sup>12</sup> and illegal human trafficking,<sup>13</sup> widespread abuses of children's rights and violence against children,<sup>14</sup> torture,<sup>15</sup> threats to human rights defenders (HRDs)<sup>16</sup> and journalists,<sup>17</sup> minority rights,<sup>18</sup> and rights of migrants and refugees.<sup>19</sup> The report also noted the many challenges facing Pakistan in upholding human rights, especially given the precarious security situation in some areas, serious economic challenges, large drought-affected areas, high numbers of refugees, and high population growth rate.<sup>20</sup>

#### OHCHR Compilation of Stakeholder Submissions<sup>21</sup>

Twenty-one submissions were made by civil society organisations, including two joint submissions by 12 national organisations amongst whom were the Supreme Court Bar Association of Pakistan, Pakistan Federal Union of Journalists and National Commission for Justice and Peace. Among the many issues raised were the non-ratification of ICCPR, ICESCR and CAT,<sup>22</sup> the imposition of a State of Emergency and the subsequent suspension of fundamental freedoms, the lack of a national human rights body, lack of cooperation with human rights mechanisms (particularly UN Special Procedures), discrimination and violence against women, caste-based discrimination, use of the death penalty, systematic human rights violations by officials and security forces, torture, arbitrary detentions, the independence the judiciary, impunity and violations of the freedom of religion, the freedom of expression and the freedom of peaceful assembly. Abusive counterterrorism policies were also mentioned.

#### Interactive Dialogue<sup>23</sup>

The state presentation was conducted by Ms. Fauzia Wahab, member of the National Assembly. During the first part of the presentation, the contribution of the UPR to the human rights situation in Pakistan was noted, and a historical overview of the development of Pakistan's vision of a modern, democratic political system was made. Ms Wahab also noted that core values such as equality, non-discrimination, guarantee of fundamental rights, etc. needed to be implemented, and while Pakistan had made impressive strides in the recent past, it still had a long way to go. The delegation then mentioned Pakistan's attachment to various human rights mechanisms, and gave an overview of the legislative and institutional provisions in place. Among the priorities identified were creating a Paris-Principles compliant national human rights body, protection of women's rights, children's rights, minorities and refugees. Also, poverty reduction programmes and adequate housing were cited as areas of improvement. Finally, the threat of terrorism was emphasised, and measures inter-alia madrassa reforms were noted. No responses to written questions were made.

During the interactive dialogue, 70 countries took the floor. While some countries addressed crucial human rights issues, others chose to either solely make welcoming statements,<sup>24</sup> or ask questions without pointing out violations.<sup>25</sup> Among the main issues raised were the creation of a national human rights institution,<sup>26</sup> human rights violations by security forces,<sup>27</sup> lack of access to international human rights instruments,<sup>28</sup> cooperation with human rights mechanisms,<sup>29</sup> use of the death penalty,<sup>30</sup> violations during counterterrorism operations (including arbitrary detention and enforced disappearances),<sup>31</sup> situation of the judiciary,<sup>32</sup> rights of minorities,<sup>33</sup> women's rights,<sup>34</sup> rights of refugees,<sup>35</sup> rights of the child,<sup>36</sup> prison conditions,<sup>37</sup> internally displaced persons (IDPs),<sup>38</sup> threats to human rights defenders (HRDs),<sup>39</sup> freedom of religion and belief,<sup>40</sup> freedom of expression<sup>41</sup> and press freedom,<sup>42</sup> right to education,<sup>43</sup> adequate housing,<sup>44</sup> participation of civil society<sup>45</sup> and poverty reduction.<sup>46</sup> Questions regarding child trafficking,<sup>47</sup> protection of human rights during counterterrorism operations<sup>48</sup> and the right to a fair trial<sup>49</sup> were not merited with a response by the delegation.

The delegation's responses were general and brief and lacked references to quantitative data (statistics, assessments, etc). The responses also often included refutations of allegations ("refugees are not being returned, this is a wrong impression").<sup>50</sup> For example, in the case of impunity of security forces, the delegation stated that there was no impunity as its security forces were trained in humanitarian law, and that appropriate safeguards for accountability were in place. In the case of hudood laws, particularly the criminalisation of premarital consensual sex, the delegation disagreed that this was a fundamental human right, and refused to initiate proceedings to decriminalise it. Also, responding to questions regarding use of the death penalty, the delegation refused to budge stating that "relates to the criminal justice system and does not contradict any of the universally recognised human rights".<sup>51</sup>

While Pakistan assured the Council that it would work towards adopting the recommendations, the adoption of the report of the working group proved to be rather controversial. The delegation (backed by

Egypt) sought to include a paragraph noting that some of the recommendations included (concerning non-marital consensual sex, death penalty, defamation and legislation dealing with honour killings) did not fall under the framework of universally recognised human rights, nor conformed to its obligations. The sought amendment was to read: "Pakistan further notes that other recommendations in paragraphs 23(b)<sup>52</sup> and (f),<sup>53</sup> 30(b)<sup>54</sup> and (d)<sup>55</sup>, 43(c)<sup>56</sup>, 62(b)<sup>57</sup> and (e)<sup>58</sup> in Section II above neither fall under the framework of universally recognised human rights nor conform to its current laws, pledges and commitments, hence, cannot be accepted."

This proposal sparked a fierce debate (continuing into the next day) wherein several states<sup>59</sup> felt that this would imply a factual legal judgement and set an unwanted precedent against the spirit of institutionbuilding within the Council. Compromise was reached wherein "notes" was replaced with "considered", and a disclaimer was added to clarify that the views reflected by the state under review do not apply to other states in the Council. The modified amendment read: "Pakistan considers that recommendations contained in paragraphs 23(b) and (f), 27(b), 30(b) and (d), 43(c), and 62(b) and (e) in Section II above are neither universally recognised human rights nor conform to its existing laws, pledges and commitments, and cannot accept them". This amendment came with an addendum which stated that "all conclusions and/or recommendations contained in the present report reflect the position of the submitting state(s) and /or the state under review thereon. They should not be construed as endorsed by the Working Group as a whole."<sup>60</sup>

## **Plenary**<sup>61</sup>

The plenary session examining Pakistan's role in the UPR took place on 12 June 2008. After mentioning that the delegation had only received preliminary feedback from government departments regarding the recommendations, the opening statement focussed largely on women's rights and religious freedom by pointing out that religious freedoms were guaranteed by laws, and that several initiatives were being implemented to improve women's rights, including a 2004 law declaring honour killings to be murder, and a 2006 bill amending the Hudood Ordinance to protect rape victims. Issues such as independence of the judiciary since the State of Emergency was lifted, terrorism, capital punishment, human rights training, protection of human rights defenders, rights of the child, reforming its lawless tribal areas, and the ratification of international instruments were briefly touched upon. Only eight states were allowed to the take the floor, and the dialogue consisted mostly of positive comments regarding constructive engagement during the UPR,<sup>62</sup> progress in promoting women's rights<sup>63</sup> and efforts to combat terrorism.<sup>64</sup> Concerns raised included rejection of recommendations regarding decriminalising non-marital sex, not recognising martial rape as a crime, and blasphemy laws.<sup>65</sup> India took the floor to bring attention to what it saw as a technical problem relating to sovereignty over Kashmir.

Many NGOs expressed concern over Pakistan's rejection of several recommendations<sup>66</sup> and the claim that they were not based on universally recognised human rights principles.<sup>67</sup> Other concerns included restrictions on freedom of expression<sup>68</sup> and religion,<sup>69</sup> lack of judicial independence and the nonreinstatement of terminated judges,<sup>70</sup> death penalty,<sup>71</sup> anti-terror measures like secret detentions and forced disappearances,<sup>72</sup> and caste-based discrimination.<sup>73</sup> During the time allotted for civil society stakeholders to speak, Egypt, with the support of China, repeatedly interrupted with various questions in protest for what they felt was unfair treatment of the delegation, and stated that NGOs were straying outside their permitted scope and suggested they "use their time wisely". Other countries protested this interruption,<sup>74</sup> and the President of the Council had to defend NGO statements by stating that those comments were indeed relevant. The closing statement of the delegation maintained that Pakistan could not legalise consensual sex, given cultural norms and considerations and urged states to "not impose their views" on Pakistan. The delegation also stressed that reform on laws regarding defamation and zina (extramarital sex) were underway and accused civil society of relying on "outdated information". Finally, the delegation also responded to India's comment by stating that Kashmir did not belong to either India or Pakistan, and that it was "disputed territory".

# Endnotes

- Refer, A/HRC/WG.6/PAK/1, para 1. [The NGOs mentioned include Save the Children, SEHER, CARITAS, Global Welfare Trust, Research Society of International Law (RSIL) and the Ansar Burney Trust.]
- <sup>2</sup> Refer, A/HRC/WG.6/PAK/1.
- <sup>3</sup> Refer, A/HRC/WG.6/PAK/2, (14 April 2008).
- <sup>4</sup> According to the compilation, Pakistan was yet to ratify ICCPR, ICESCR, CAT, ICRMW, CPD, CPD-OP, CED, the Palermo Protocol, OP-CEDAW (and withdraw its declaration that CEDAW was subject to the Constitution), CRC-OP-SC and CRC-OP-AC, Article 14 of ICERD (regarding individual complaints), the Rome Statute, and the 1951 Convention relating to the Status of Refugees. However, on 17 April 2008 (four days after the compilation was drafted), Pakistan did uphold its pledge and ratify the ICESCR, and also signed the ICCPR and CAT.
- <sup>5</sup> Special Rapporteur on Torture, E/CN.4/2005/62/Add.1, para 1252, A/HRC/4/33/Add.1 paras 206, 209, A/ HRC/7/3/Add.1, para 173.
- <sup>6</sup> Special Rapporteur for Violence Against Women, A/HRC/4/21/Add.1 paras 495-504; Special Rapporteur on Summary executions, A/HRC/4/20/Add.1 pp. 242-243, 247-251, E/CN.4/2004/7/Add.1, paras 354-356, 358-361, 363-364, 367, 370-441, 443-453, 456-457, 459-472, 474-477, 479-481, 483-493, 495-497, 499-500, E/CN.4/2006/53/Add.1, p. 177; Special Rapporteur on the Question of Torture, E/CN.4/2005/62/Add.1, paras 1195, 1196, 1198-1203, E/CN.6/2006/6/Add.1, para 351, A/HRC/7/3/Add.1, para 176. Special Rapporteur on Torture, E.CN.4/2005/62/Add.1, para 1250, A/HRC/4/33/Add.1, para 206, A/HRC/7/3/Add.2, para 507; CRC, CRC/C/15/Add.217, para 40; Special Rapporteur on Adequate Housing, A/HRC/4/18/Add.1, para 44 and UN Press Release, "UN EXPERT CALLS FOR IMMEDIATE HALT TO FORCED EVICTIONS IN KARACHI, PAKISTAN" (26 May 2006).
- <sup>7</sup> Special Rapporteur on Summary, Arbitrary and Extrajudicial Execution, A/HRC/4/20/Add.1, pp. 244-246, 247-251., E/CN.4/2004/7/Add.1, paras. 343-352 and 502-505. E/CN.4/2005/7/Add.1, paras 550, 551, 552, 560, 562, 563, 565-568, 572, 573, 575, 576., E/CN.4/2006/53/Add.1, pp. 168-169, 171, 175-177.
- <sup>8</sup> CEDAW, CEDAW/C/PAK/CO/3, paras 5, 14-15, 16, 28, 29; CERD, CERD/C/304/Add. 25, para 22; CRC, CRC/C/15/Add.217, paras 29-30; Special Rapporteur on Freedom of Religion, A/HRC/4/21/Add.1, paras 234-237; Special Rapporteur on Violence Against Women, A/HRC/4/34/Add.1 paras 495-504.
- <sup>9</sup> Special Rapporteur on Summary, Arbitrary and Extrajudicial Execution, E/CN.4/2005/7/Add.1 paras 533, 542, 548, 571, E/CN.4/2006/53/Add.1, pp. 167-170, 179-183, A/HRC/4/20/Add.1 pp. 241-242, 251-254.
- <sup>10</sup> Special Rapporteur on Summary Executions, E/CN.4/2004/7/Add.1 paras 354-356, 358-361, 362-364, 365, 366-368, 370-441, 442, 454, 455, 458, 473, 478, 482, 494; Special Rapporteur on Violence Against Women, E/CN.4/2005/72/Add.1 paras 331-332, 341-342.
- <sup>11</sup> Special Rapporteur on Summary Executions, E/CN.4/2006/53/Add.1, pp. 171, 193-184, 244-246.
- <sup>12</sup> Special Rapporteur on Summary Executions, A/HRC/4/20/Add. 1, pp. 247-251; Special Rapporteur on torture, E/CN.4/2005/62/Add.1, paras 1234-1239; UNIFEM, "Submission to the UPR on Pakistan", p. 2, citing CEDAW/ C/PAK/1-3, para 23; CEDAW, CEDAW/C/PAK/1-3, paras 23-24, 26-27; CRC, CRC/C/15/Add.217. paras 42-43, 56; Special Rapporteur on Violence Against Women, E/CN.4/2005/72/Add.1, para 336.
- <sup>13</sup> UNFPA, "State of the World's Population Report", New York, 2006, p.46; CEDAW, CEDAW/C/PAK/CO/3, paras 30-31; UNHCR, "Submission to the UPR on Pakistan", pp. 1-2, citing CRC/C/15/Add.217, paras 76-77; Special Rapporteur on the Sale of Children, E/CN.4/2005/78/Add.3, para 173.
- <sup>14</sup> Special Rapporteur on Summary Executions, E/CN.4/2006/53/Add.1, pp. 180-183, 247-251; CRC, CRC/C/15/ Add.215, paras 27, 28, 40, 48, 61, 64, 80, 81; Special Rapporteur on the Sale of Children, E/C.4/2005/78/Add.3, para 171; Special Rapporteur on the Human Rights of Migrants, E/CN.4/2006/73/Add.1, paras 236-240.
- <sup>15</sup> Special Rapporteur on the Question of Torture, E/CN.4/2005/62/Add.1, paras 1195, 1196, 1198- 1203, E/CN.4/2006/6/Add.1, paras 351, A/HRC/7/3/Add.1, para. 176.
- <sup>16</sup> SRSG on human rights defenders, E/CN.4/2006/95/Add.5, paras 1283, 1265, A/HRC/4/37/Add.1, para 515. Special Rapporteur on Freedom of Expression, A/HRC/4/27/Add.1, para 482., E/CN.4/2006/55/Add.1, para 258.
- <sup>17</sup> Special Rapporteur on Freedom of Expression, A/HRC/4/27/Add.1, paras 488-489., A/HRC/4/27/Add.1, para 486. E/CN.4/2006/55/Add.1, paras 768, 772, E/CN.4/2005/64/Add.1, para. 700; Special Rapporteur on the question of torture, E/CN.4/2005/62/Add.1, paras 1247, 1252, 1256., E/CN.4/2006/6/Add.1, paras 351., A/HRC/4/33/Add.1, paras 208, 209, 210., A/HRC/7/3/Add.1, paras 173-174.
- <sup>18</sup> CEDAW, CEDAW/C/PAK/CO/3, paras 14-15; CRC, CRC/C/15/Add.217, para 40; Special Rapporteur on Adequate Housing, A/HRC/4/18/Add.1, para. 45; ILO Committee of Experts on the Application of Conventions and Recommendations, 2006, Geneva, Doc. No.062006PAK111, para 7.
- <sup>19</sup> UNHCR, "UNHCR Submission to the UPR on Pakistan", p. 1, citing CRC/C/15/Add.217, paras 65-66; UNHCR, Global Appeal Report 2007", Geneva, 2007, p. 203; CRC, CRC/C/15/Add.217, paras 65-56.
- <sup>20</sup> Refer, A/HRC/WG.6/2/PAK/2, para 40. See also, CRC/C/15/Add.217, para 6.
- <sup>21</sup> Refer, A/HRC/WG.6/2/PAK/3.

- <sup>22</sup> Asian Center for Human Rights, "UPR Submission for Pakistan", p. 1 (ACHR). This recommendation was promptly implemented before the UPR took place.
- <sup>23</sup> Sources outside official UN documents include "UPR Monitor: Pakistan", International Service for Human Rights, at http://www.ishr.ch/hrm/council/upr/upr\_2nd\_session\_2008/upr\_002\_pakistan\_final.pdf; "Pakistan's Review in the Working Group", UPR Info, URL; http://www.upr-info.org/-Pakistan-.html.
- <sup>24</sup> Palestine, Indonesia, Tunisia, Belarus, Jordan, Panama, Nepal, Sri Lanka, Singapore, Yemen, Mauritius.
- <sup>25</sup> Algeria, Malaysia, DPR Korea, Qatar, United Arab Emirates, Morocco, Nigeria.
- <sup>26</sup> UK, France, Morocco, Venezuela, Finland.
- <sup>27</sup> UK, Sweden.
- <sup>28</sup> Holy See, Mexico, UK, South Africa, Senegal, Philippines, Brazil, Romania, Republic of Korea, Australia.
- <sup>29</sup> Latvia.
- <sup>30</sup> UK, Switzerland, Austria, Italy.
- <sup>31</sup> Mexico, Greece.
- <sup>32</sup> Canada, France, Greece, Switzerland, Romania.
- <sup>33</sup> China, Canada, Holy See, South Africa, Denmark, Portugal, Russia.
- <sup>34</sup> Slovenia, UK, Japan, Qatar, Philippines, Luxembourg, Azerbaijan, Venezuela, Nicaragua, Canada, Czech Republic, New Zealand, Brazil, Germany, Republic of Korea, Portugal, Turkey, Sweden.
- <sup>35</sup> Saudi Arabia, Kuwait, Syria.
- <sup>36</sup> Belgium, Philippines, Turkey, Russia, Switzerland, Brazil, Italy, Cuba, Egypt.
- <sup>37</sup> Germany, Latvia.
- <sup>38</sup> Austria.
- <sup>39</sup> Brazil, Ireland.
- <sup>40</sup> Canada, Chile, France, Belgium, Holy See, Greece.
- <sup>41</sup> Canada, Japan.
- <sup>42</sup> Norway, Bahrain, Greece.
- <sup>43</sup> Malaysia, DPR Korea, Bangladesh, Finland.
- <sup>44</sup> South Africa, Nigeria, Republic of Korea.
- <sup>45</sup> Oman, Turkey.
- 46 Sudan.
- <sup>47</sup> Belgium.
- <sup>48</sup> Mexico, Greece.
- <sup>49</sup> Switzerland.
- <sup>50</sup> Refer, A/HRC/WG.6/2/L.8, para 104.
- <sup>51</sup> Refer, A/HRC/WG.6/2/L.8, para 47.
- <sup>52</sup> Recommendation by Canada, regarding repealing provisions criminalising non-marital consensual sex and failing to recognise marital rape.
- <sup>53</sup> Canada, regarding decriminalising defamation.
- <sup>54</sup> United Kingdom, reviewing the death penalty, with a view towards introducing a moratorium and abolishing it.
- <sup>55</sup> United Kingdom, repealing the Hudood and Zina Ordnances.
- <sup>56</sup> Switzerland, declaring a moratorium on executions and moving towards abolition.
- <sup>57</sup> Czech Republic, decriminalising adultery and non-marital consensual sex.
- <sup>58</sup> Czech Repubilc, prohibiting provisions of the Qisas and Diyat law in cases of honour killings.
- <sup>59</sup> Slovenia, Switzerland, the Netherlands, Canada, Italy, Mexico.
- <sup>60</sup> Refer, A/HRC/WG.6/2/L.8, Chapter II, para 108-109.
- <sup>61</sup> The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.
- <sup>62</sup> China, Bahrain, Morocco, Kuwait, Algeria, Indonesia.
- <sup>63</sup> China, Bahrain, Morocco, Algeria, Indonesia.
- <sup>64</sup> China, Morocco, Algeria.
- 65 Canada.
- <sup>66</sup> The rejected recommendations were 23(b)<sup>52</sup> and (f)<sup>53</sup>, 30(b)<sup>54</sup> and (d)<sup>55</sup>, 43(c)<sup>56</sup>, 62(b)<sup>57</sup> and (e)<sup>66</sup>. Refer to the corresponding endnotes for further details.
- <sup>67</sup> International Federation of Human Rights Leagues (IFHRL), Human Rights Watch, International Commission of Jurists (ICJ), Amnesty International, Asian Legal Resource Centre (ALRC), International Women's Rights Action Watch (IWRAW).
- <sup>68</sup> IFHRL, ICJ, Euro Centre for Law and Justice.
- <sup>69</sup> Euro Centre for Law and Justice, Interfaith International.
- <sup>70</sup> HRW, ICJ, AI, ALRC, Interfaith International.
- <sup>71</sup> IFHRL, Human Rights Watch , Amnesty International.
- <sup>72</sup> Amnesty International, Human Rights Watch, ALRC.
- <sup>73</sup> Asian Forum, ALRC.
- <sup>74</sup> Slovenia and Canada argued that the comments were in fact "within the limits of general comments allowed by GOs".

# **South Africa**

South Africa's UPR occurred during the First Session of the Working Group designed to implement the UPR mechanism between 7 and 18 April 2008.

#### Members of the Troika

Zambia, Guatemala and Qatar

#### Consultation

No mention of nation wide consultation with civil society was made in the state report.

#### Report by the State<sup>1</sup>

The state report was produced shortly before the review process, and the presentation included large parts that were read out from the report. The first part of the report presented South Africa's obligations to various human rights instruments, and recent ratifications<sup>2</sup> to core human rights treaties. The remainder was a detailed account of a few critical human rights issues facing South Africa, namely, the right to health care, adequate housing, food, water, social security, education, citizenship, refugees and asylum seekers, as well as the role of the Department of Public Services and Administration, which implements policies related to the issues above. However, quantitative analyses of important issues such as torture with impunity, racial violence and discrimination, violence against vulnerable groups such as women, LGBTs, migrants, minorities and issues related to poverty and crime were notably absent from the report.

## **OHCHR** Compilation of Information from UN Sources<sup>3</sup>

Several critical issues regarding the protection of human rights were highlighted in the compilation. Broadly, while the compilation welcomed South Africa's wide ratification of various key human rights instruments since the end of apartheid, it urged South Africa to go ahead and ratify those instruments to which it has either already signed, or withdraw reservations where it has made reservations.<sup>4</sup> Issues noted in the compilation as being of particular concern include *de facto* segregation on racial and class-based lines (ghettoisation),<sup>5</sup> torture,<sup>6</sup> police brutality and impunity,<sup>7</sup> housing,<sup>8</sup> threats to migrants,<sup>9</sup> corruption in the judiciary and abuses of legislation designed to fight terrorism,<sup>10</sup> poor detention conditions,<sup>11</sup> domestic violence,<sup>12</sup> human trafficking and the absence of legislation tackling the problem,<sup>13</sup> corporal punishment,<sup>14</sup> indigenous peoples rights,<sup>15</sup> high prevalence of HIV/AIDS,<sup>16</sup> rights of migrants and asylum seekers,<sup>17</sup> poverty,<sup>18</sup> lack of access to social services<sup>19</sup> and education.<sup>20</sup>

## OHCHR Compilation of Stakeholder Submissions<sup>21</sup>

Submissions were made by 16 NGOS working alongside the South Africa Human Rights Commission and the University of Pretoria. The issues raised in the compilation were largely in symmetry with the compilation of information from UN sources. Specific concerns raised included *de facto* racism, racial segregation and endemic racial discrimination, substandard housing, torture, inadequate social services, high prevalence of HIV/AIDS, poor prison conditions, corruption, gender-based violence, corporal punishment, child exploitation, hate crimes based on sexual orientation, indigenous rights and lack of access to education and poverty. Among the efforts lauded were the government's Equality Courts, attempts to provide health care and models used by the government to develop child-related legislation.<sup>22</sup>

#### Interactive Dialogue<sup>23</sup>

The oral presentation contained most of the issues dealt with in the state report, and was not made available until shortly before the presentation.<sup>24</sup> The delegation led by Ambassador Glaudine J. Mtshali, Permanent Representative to the UN, gave a presentation that started by providing an overview of the achievements of the Constitution, and the mechanisms that besides guaranteeing fundamental freedoms and human rights, also established several independent institutions to provide oversight.<sup>25</sup> Also worth mentioning was her emphasis that delivering adequate housing, education and public health care to South Africans were top state priorities. One example cited was South Africa's commitment to provide universal primary education by 2015.<sup>26</sup> She also emphasised that South Africa continues to set the standard for human rights protection in the region, despite the recent past.

During the interaction, 51 states took the floor. Sri Lanka, Botswana, Palestine, Jordan and Cuba chose to only make welcoming statements. While many countries praised the progress made by the current government since apartheid ended, several critical questions were also raised. These included questions on *de facto* racial segregation and discrimination,<sup>27</sup> as well as specific steps taken by South Africa to meet the Durban Declaration and Program of Action (DDPA),<sup>28</sup> women's rights, gender equality,<sup>29</sup> sexual violence,<sup>30</sup> rights of the disabled, torture,<sup>31</sup> the ratification of the Optional Protocol to CAT (OP-CAT),<sup>32</sup> the rights of migrants and asylum seekers,<sup>33</sup> efforts to tackle HIV/AIDS,<sup>34</sup> non-issuance of a standing invitation to special procedures,<sup>35</sup> transitional justice, truth and reconciliation bodies,<sup>36</sup> corporal punishments,<sup>37</sup> discrimination based on sexual orientation,<sup>38</sup> rights of the child,<sup>39</sup> prison conditions,<sup>40</sup> threats to human rights defenders)<sup>41</sup> and access to social services including health care and housing.

The relatively small South African delegation provided detailed responses addressing nearly all the questions posed. Among the issues that were not addressed in the replies were women's rights and empowerment, rights of indigenous people, the efficacy of national human rights institutions and prison conditions. Several states urged South Africa to ratify the remaining core human rights instruments, namely OP-CAT and the ICESCR,<sup>42</sup> to which South Africa responded by claiming that while there were no political obstacles, the state was simply looking for ways to "optimise" the process. In the closing remarks of the Ambassador, it was stressed that South Africa will convey these suggestions to the government, and work towards developing economic, social and cultural rights, as it has done so with civil and political rights in the past. It is noteworthy to mention that just after a month of the UPR review process, xenophobic violence plagued South Africa's townships, exploded and spread on a level never seen before. Despite pledges to tackle problems of crime, violence and xenophobia, the government appeared to have been caught unawares and unprepared to curb the violence.<sup>43</sup>

#### Plenary<sup>44</sup>

At the 11 June plenary the delegation focussed on how the country had gone about implementing most of the earlier recommendations on issues ranging from corporal punishment, education, extradition, to discrimination, racism, and xenophobia. Referring to the xenophobic violence that broke out in mid-May 2008, the delegation stressed that the government response was adequate, and that what happened "cannot be described as state-sponsored xenophobia". The delegation also announced that South Africa was in the process of considering ratification of the ICESCR and its Optional Protocol. All the member states that took the floor commended South Africa on its approach to the UPR, progress in combating xenophobic violence (especially the government's strong condemnation of the violence),<sup>45</sup> HIV/AIDS, access to HIV/AIDS medicine,<sup>46</sup> adequate housing,<sup>47</sup> education,<sup>48</sup> gender equality,<sup>49</sup> and violence against women.<sup>50</sup> Civil society groups were less impressed by South Africa's progress however, and many criticisms were voiced, including allegations of inadequate government policies to tackle the endemic xenophobic violence,<sup>51</sup> discriminatory barriers to accessing retroviral medicines,<sup>52</sup> lack of recommendations focussing on forced evictions,<sup>53</sup> and delays in passing the Sexual Violence Bill.<sup>54</sup> The delegation responded by stating that the UPR was a "positive experience" and that all reports and presentations by states were "valuable resources".

# Endnotes

- <sup>1</sup> Refer, A/HRC/WG.6/ZAF/1.
- <sup>2</sup> Among the most important recent ratifications include the Convention on the Rights of Persons with Disabilities (CPD) and its Optional Protocol, as well as the Rome Statute of ICC.
- <sup>3</sup> Refer, A/HRC/WG.6/1/ZAF/1, (15 April 2008).
- <sup>4</sup> In particular, the core treaties to which South Africa is not a party to are the Optional protocol to CAT (OP-CAT), ICESCR, CED, and the Optional Protocol to the CRC for the Rights of the Child in Armed Conflicts (CRC-AC).
- <sup>5</sup> CERD, A/HRC/WG.6/ZAF/2, para 6.
- <sup>6</sup> CAT, A/HRC/WG.6/ZAF/2, para 7.
- <sup>7</sup> CAT, Working Group on Arbitrary Detention, Special Rapporteur on Terrorism, A/HRC/WG.6/ZAF/2 paras 6 and 7.
- CERD, UN-Habitat, Special Rapporteur on Adequate Housing, A/HRC/WG.6/ZAF/2, paras 15 and 16.
- <sup>9</sup> Special Rapporteur on Terrorism, UN High Commission for Refugees, A/HRC/WG.6/ZAF/2, para 21.
- <sup>10</sup> CERD, CRC, CAT, South Africa Human Rights Commission (SAHRC), A/HRC/WG.6/ZAF/2, paras 12, 13 and 14.
- <sup>11</sup> CAT, Working group on Arbitrary Detentions, A/HRC/WG.6/ZAF/2, para 8.
- <sup>12</sup> CRC, CAT, CERD, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, UNICEF, A/ HRC/WG.6/ZAF/2, para 9.
- <sup>13</sup> CAT, CERD, A/HRC/WG.6/ZAF/2, para 10.
- <sup>14</sup> CRC, CAT, A/HRC/WG.6/ZAF/2, para 11.
- <sup>15</sup> CERD, Special Rapporteur on Indigenous People, A/HRC/WG.6/ZAF/2, para 19.
- <sup>16</sup> CERD, UNDP, UNICEF, Special Rapporteur on Indigenous People, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, A/HRC/WG.6/ZAF/2, paras 8, 16, 17 and 25.
- 17 CERD, CAT, UN High Commission for Refugees, CRC, Special Rapporteur on Terrorism, Working Group on Arbitrary Detention, A/HRC/WG.6/ZAF/2, paras 20 and 21.
- <sup>18</sup> CERD, A/HRC/WG.6/ZAF/2, para 15.
- <sup>19</sup> CERD, A/HRC/WG.6/ZAF/2, para 16.
- <sup>20</sup> CRC, UNICEF, A/HRC/WG.6/ZAF/2, para 18.
- <sup>21</sup> "UPR Monitor: South Africa, 1st Session 2008", International Service for Human Rights, p. 3, at http://www.ishr.ch/ hrm/council/upr/upr\_1st\_session\_2008/upr\_001\_south\_africa\_final.pdf.
- <sup>22</sup> Refer, for example the submission by Children's Now, at http://www.upr-info.org/IMG/pdf/ Children\_Now\_South\_Africa\_Off\_2008.pdf.
- <sup>23</sup> Aside from the official UN documents, the primary source used was "UPR Monitor: South Africa, 1st Session 2008", International Service for Human Rights, at http://www.ishr.ch/hrm/council/upr/upr\_1st\_session\_2008/ upr\_001\_south\_africa\_final.pdf.
- <sup>24</sup> Ibid. p. 1.
- <sup>25</sup> Among the ones mentioned were the Public Protector, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Commission on Gender Equality, as well as the Paris Principles, South African Human Rights Commission (SAHRC).
- <sup>26</sup> Along the lines of Millennium Development Goal # 2.
- <sup>27</sup> Guinea, Democratic Republic of the Congo (DRC), Cote d'Ivoire, Egypt, Pakistan, Senegal, China, Mauritania, Switzerland.
- <sup>28</sup> Malaysia, DRC and Iran.
- <sup>29</sup> Tunisia, Brazil, Slovenia, Angola, Indonesia and Bangladesh.
- <sup>30</sup> Canada, Switzerland, the Netherlands and USA.
- <sup>31</sup> Denmark, Slovenia, Russian Federation, Switzerland and DRC.
- <sup>32</sup> UK, Brazil, Romania and Indonesia.
- <sup>33</sup> USA, Canada, Senegal, Ghana, the Netherlands and France.
- <sup>34</sup> USA, Pakistan, Mexico, Algeria, Germany, Brazil, Zambia, Romania, Bangladesh and Iran.
- <sup>35</sup> Pakistan, Botswana, Belgium, Switzerland and New Zealand.
- <sup>36</sup> Guinea, China, DRC, Egypt and Jordan.
- <sup>37</sup> Slovenia, Brazil and Switzerland.
- <sup>38</sup> UK and Belgium.
- <sup>39</sup> Canada and Angola.
- <sup>40</sup> DRC, Zambia and Russia.
- <sup>41</sup> Refer to Ambassador Mtshali's responses, A/HRC/8/32, para 29, and her closing remarks, para 66.
- <sup>42</sup> Germany, Zimbabwe, Brazil, Romania, Tanzania, Indonesia and Senegal.
- <sup>43</sup> This was an opinion expressed in many newspapers and media sources. See for example "SA's Mbeki says riots are a disgrace". BBC News (25 May 2008) at http://news.bbc.co.uk/2/hi/africa/7419217.stm.
- <sup>44</sup> The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.
- <sup>45</sup> Nigeria, Canada, Tunisia, China, Botswana, Algeria and Malaysia.

- <sup>45</sup> Nigeria, Canada, Tunisia, China, Doiswana, 7
  <sup>46</sup> Algeria.
  <sup>47</sup> Algeria.
  <sup>48</sup> Angola.
  <sup>49</sup> Syria.
  <sup>50</sup> Angola.
  <sup>51</sup> Amnesty International.
  <sup>52</sup> Human Rights Watch, Amnesty International.
  <sup>53</sup> Ibid
- <sup>53</sup> Ibid.
- <sup>54</sup> Human Rights Watch.

## Sri Lanka

Sri Lanka's UPR occurred during the Second Session of the working group designed to implement the UPR mechanism between 5 and 16 May 2008.

#### Members of the Troika

Ukraine, Cameroon and Bangladesh

#### Consultation

Sri Lanka has maintained that widespread consultation between state agencies, security agencies and civil society took place while drafting the report.<sup>1</sup> However, no further details were given regarding input of stakeholders, nor the incorporation of information gathered. According to civil society groups, the consultation process consisted of a short meeting between a government delegation and select civil society groups. During the meeting, the government delegation explained the UPR process, but did not produce a preliminary draft, nor agreed to discuss any critical issues or collect information from the members of civil society present. Hence, the consultations did not allegedly meet guidelines issued by the Council.

#### Report by the State<sup>2</sup>

The national report submitted to the UPR contained a clear structure and followed guidelines provided by the HRC. The first part reviewed Sri Lanka's constitutional mechanisms to safeguard human rights. The second part titled "Main Contemporary Challenges" identifies two issues – the threat from LTTE terrorism and recovery from the tsunami of December 2004. The final part goes over the different institutional mechanisms set up to safeguard human rights and talks about Sri Lanka's human rights obligations in further depth. The "implementation" sub-section, while extensive, does not provide statistics or other quantitative assessments regarding the performance of deep human rights issues. Rather, it provides a few statistics regarding programmes that were successfully implemented by the government. Noteworthy to mention is the conspicuous absence of the renegade Karuna Group's role in the claimed successes of the "Nagenahira Navodaya" (Reawakening of the East) policy. In accordance with this policy, elections were held in the Eastern district of Batticaloa. The ruling party alliance allied with the Tamil Makkal Vidhutalai Pulikal (TMVP or the Karuna Group) an armed breakaway faction of LTTE and won the elections.<sup>3</sup>

#### **OHCHR** Compilation of Information from UN Sources<sup>4</sup>

The compilation contained a lengthy list of critical issues pertaining to the performance of Sri Lanka's human rights obligations. Generally, Sri Lanka is yet to ratify the Optional Protocol to CAT (OP-CAT), the Rome Statute of ICC,<sup>5</sup> and make declarations pursuant to Articles 21 (inter-state complaints) and 22 (individual complaints) of CAT<sup>6</sup> and Article 14 (individual complaints) of ICERD.<sup>7</sup> The main issues dealt with related to the right to life, liberty and security of the person, given the ongoing conflict between LTTE and government security forces and allied militia (such as the Karuna Group). They included conflict-related political killings and assassinations,<sup>8</sup> abuses by security forces,<sup>9</sup> a culture of impunity,<sup>10</sup> police torture,<sup>11</sup> threats to journalists,<sup>12</sup> threats to human rights defenders (HRDs),<sup>13</sup> extrajudicial killings, summary executions,<sup>14</sup> recruitment of child soldiers<sup>15</sup> and poor detention facilities.<sup>16</sup> Other issues included the use of corporal punishment,<sup>17</sup> recurrent instances of trafficking (especially of children),<sup>18</sup> unsatisfactory levels of religious freedom,<sup>19</sup> discrimination based on ethnicity,<sup>20</sup> gender discrimination,<sup>21</sup> violence against women,<sup>22</sup> and internally displaced persons (IDPs).<sup>23</sup>

#### OHCHR Compilation of Stakeholder Submissions<sup>24</sup>

Thirty-two civil society stakeholders, including a Joint Civil Society report (endorsed by 30 additional organizations and individuals) were submitted, and issues raised were largely complementary to the OHCHR compilation of information from UN Sources. This included extrajudicial killings, indiscriminate targeting of civilians by both LTTE and government security forces with impunity, widespread enforced disappearances from both safe zones and conflict-affected areas, recruitment of child soldiers by LTTE and TMVP, police torture and custodial deaths, violence against women, discrimination of religious and ethnic minorities, lack of media freedom, and internally displaced peoples. Many allegations regarding state complicity in committing violations, especially in the eastern province, with abuses by non-state actors such as the Karuna Group,<sup>25</sup> as well as widespread abuses by the Sri Lankan military have been documented in individual stakeholder submissions.<sup>26</sup> Other issues dealt with were discrimination and violence based on sexual orientation, and a recent Supreme Court ruling declaring Sri Lanka's ascension to the OP-ICCPR unconstitutional.<sup>27</sup>

#### Interactive Dialogue<sup>28</sup>

The country presentation reflected most of the content in the state report, in that it did not address critical and deep human rights issues that Sri Lanka is currently facing. The problems recognised by the state include the lack of funding for the National Human Rights Commission, the threat posed by terrorism, money laundering for funding terrorist activities, and the decline in the country's ranking on the World Press Freedom Index and the Reporters Sans Frontiers Index. The state also mentioned that it has developed a National Action Plan on the protection and promotion of human rights to identify challenges and provide strategies. However, in general, the presentation went over the various achievements that the government has made in the field of strengthening the judiciary, creating an atmosphere of democratic pluralism (with the entry of the TMVP under the ruling party banner), increasing press freedom, and the creation of a multitude of institutions to tackle various human rights issues. Ironically, these achievements were largely deemed ineffective by civil society, given the fact that atrocities by the LTTE and government forces continue to escalate with impunity especially since the ceasefire was abrogated. The severe decline of press freedom under the auspices of the Prevention of Terrorism Act was also cited in this regard by civil society reports.

During the interactive dialogue, 56 countries took the floor (66 requested the floor) and many critical questions were raised, while a few states were content making solely welcoming statements.<sup>29</sup> The main issues raised were the effectiveness of national human rights institutions;<sup>30</sup> the state's international human rights obligations<sup>31</sup> and lack of independent human rights monitoring;<sup>32</sup> threats to humanitarian workers and HRDs;<sup>33</sup> internally displaced persons (IDPs);<sup>34</sup> children's rights;<sup>35</sup> recruitment and participation of child soldiers in conflicts;<sup>36</sup> abrogation of ceasefire with LTTE<sup>37</sup>; arbitrary detention<sup>38</sup>; upholding the rule of law in a State of Emergency;<sup>39</sup> extrajudicial killings;<sup>40</sup> impunity of the security forces;<sup>41</sup> enforced disappearances;<sup>42</sup> torture;<sup>43</sup> women's rights;<sup>44</sup> freedom of expression;<sup>45</sup> and minority rights.<sup>46</sup> Further issues discussed were the domestic implementation of international human rights law,<sup>47</sup> caste-based discrimination<sup>48</sup> and the right to health.<sup>49</sup>

Sri Lanka's delegation responded to a majority of the questions. However, they chose to deal with most of the critical human rights challenges with general statements, and refuted many allegations that criticised government actions. When asked about enforced disappearances, torture, custodial deaths and impunity, the delegation chose to refute those claims, and firmly held that it was against the law for security forces to conduct such abuses, and that a culture of impunity, especially during counterterrorism operations was absent.<sup>50</sup> When asked about civilian casualties, the delegation blamed terrorist suicide attacks, and when probed about threats to journalists and freedom of expression, the delegation chose to blame "rivalries between Tamil groups".<sup>51</sup> In general, the delegation chose to evade specific questions on critical issues such as the impact of allegedly questionable elections in the Eastern province;<sup>52</sup> torture of HRDs and journalists;<sup>53</sup> rule of law in emergencies<sup>54</sup> and women's and children's rights. Where deep human rights

issues were addressed, the delegation chose to make general statements and relied on constitutional mechanisms and political machinations while largely ignoring the ground realities. For example, while a comment in the opening statement claimed that the TMVP was a legitimate political party which won the elections in the Eastern province through democratic means,<sup>55</sup> another comment later stated that the government was encouraged that the TMVP had "facilitated" the release of child soldiers from militia such as the "Karuna Group". In an attempt to portray the TMVP and the Karuna Group as two separate organisations, the government seemed to ignore reports that TMVP and the Karuna group are two names for the same entity which allegedly contested elections as a fully armed group in a climate of violence.<sup>56</sup>

#### Plenary<sup>57</sup>

The plenary session took place on 13 June 2008, during the 8th session of the Council. During the state presentation, the national delegation stressed that Sri Lanka had accepted 45 recommendations, undertaken to accept 11, and had rejected 26. Of these, 12 were supposedly rejected owing to the fact that the initiatives recommended were already underway, and that six were based on false premises. The delegation also stressed that expanding the presence of the OHCHR on the island was not possible, and that it had made its position "very clear" on the matter. Regarding extending a standing invitation to Special Procedures, the government reiterated its commitment to international human rights instruments, and that it had demonstrated willingness to cooperate by hosting visits over the last year. During the opening statement, the delegation also expressed its intention to consider acceding to instruments such as the Convention on the Protection of All Persons from Enforced Disappearance (CED) and OP-CAT.

During the interactive dialogue, nine states took the floor and raised issues such as the delegation's nonacceptance of several recommendations<sup>58</sup>; unwillingness to allow international monitoring;<sup>59</sup> a culture of impunity and the lack of press freedom;<sup>60</sup> the importance of investigating various human rights violations including extrajudicial killings, enforced disappearances and recruitment of child soldiers;<sup>61</sup> and the need to establish an independent national human rights institution.<sup>62</sup> Other states were more supportive and noted good progress despite challenges,<sup>63</sup> with comments ranging from appreciation of Sri Lanka's identification of its capacity building needs,<sup>64</sup> to hope that the international community would provide technical assistance to meet these needs.<sup>65</sup>

NGOs' assessments of the human rights situation in Sri Lanka as worsening was unanimous and cited widespread impunity, extrajudicial killings,<sup>66</sup> increasing violence against women,<sup>67</sup> recruitment of child soldiers,<sup>68</sup> and limited access for humanitarian organisations.<sup>69</sup> Concerns were also raised regarding the ineffectiveness of domestic mechanisms, including the National Human Rights Commission,<sup>70</sup> and the lack of judicial independence.<sup>71</sup> Furthermore, NGOs also noted that Sri Lanka's rejection of so many recommendations, including those related to impunity, enforced disappearances and threats to human rights defenders, demonstrated a lack of accountability and transparency in dealing with the escalating crisis.<sup>72</sup>

The delegation's concluding remarks consisted of refutations regarding complicity in torture and the existence of a culture of impunity in the security forces. Furthermore, the delegation rejected recommendations for independent monitoring, citing the lack of support from European countries in its fight against terrorism, particularly terrorist funding. Notably, the delegation stated that while it believed in the sincerity of such recommendations, "continuous finger-wagging" was not helpful. The delegation also alleged that while it was doing its utmost to implement recommendations from the 2006 report by the Special Rapporteur on the Prevention of Torture, the latter had not replied to letters by the government. With regards to press freedom, the delegation pointed out that the press needs to be sensitive, given the delicate national security situation.

# **Endnotes**

- <sup>1</sup> Refer, A/HRC/WG.6/2/LKA/1, paras 1, 2.
- <sup>2</sup> Refer, A/HRC/WG.6/2/LKA/1.
- <sup>3</sup> BBC News "Ex-Tamil Tigers win local polls" (11 March 2008) at http://news.bbc.co.uk/2/hi/south\_asia/ 7288942.stm.
- <sup>4</sup> Refer, A/HRC/WG.6/2/LKA/2.
- <sup>5</sup> Recommendation from Special Rapporteur on Torture and on Extrajudicial, Summary or Arbitrary Executions.
- <sup>6</sup> Recommendation by Committee Against Torture (CAT).
- <sup>7</sup> Recommendation by Committee on the Elimination of Racial Discrimination (CERD).
- <sup>8</sup> Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, See E/CN.4/2006/53/Add.5, paras 4, 10. and A/HRC/WG.6/2/LKA/2, para 9.
- <sup>9</sup> CAT, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, CEDAW, HR Committee, See A/ HRC/WG.6/2/LKA/2, paras 9, 11, 14, 15.
- <sup>10</sup> Special Rapporteur on Torture, A/HRC/WG.6/2/LKA, para 20. See also , Colombo, (13 October 2007); "Address of High Commissioner for Human Rights to the Human Rights Council, 2nd Session, (18 September 2006); and CCPR/CO/79/LKA, para 10.
- <sup>11</sup> CAT, CAT/C/LKA/CO/2, para 12 and CCPR/CO/79/LKA, para 9, Special Rapporteur on Torture, A/HRC/7/3/ Add.6, para 70; Special Rapporteur on Summary Executions, E/CN.4/2006/53/Add.5, paras 53, 54.
- <sup>12</sup> Special Rapporteur on the Freedom of Expression, A/HRC/4/27/Add.1, 582, 583, 581, 584, 586, E/CN.4/ 2005/64/Add.1, para 810.
- <sup>13</sup> Special Rapporteur on Freedom of Expression, A/HRC/4/27/Add.1, paras 587, 588; E/CN.4/2005/64/Add.1, para 814; Special Rapporteur to Secretary General (SRSG) Human Rights Defenders, A/HRC/4/37/Add.1, paras 592, 593, 594, 595, 597, 599.
- <sup>14</sup> Special Rapporteur on Summary Executions, E/CN.4/2006/53/Add.5, paras 53, 54 and E/CN.4/2006/53/ Add.1, pp. 217-219.
- <sup>15</sup> CAT, CAT/C/LKA/CO/2/, para 17; UNICEF, "UNICEF Submissions to the UPR on Sri Lanka", p. 3. See also UNDP, Human Development Report 2005, New York, p. 161.
- <sup>16</sup> Special Rapporteur on Torture, A/HRC/7/3/Add.6, paras 80, 84.
- <sup>17</sup> CRC and the HR Committee, CRC/C/15/Add.207, paras 28-29 and CCPR/CO/79/LKA, para 11.
- <sup>18</sup> HR Committee and UNHCR, "HR Committee, 2003, Concluding Observations", CCPR/CO/79/LKA, para 14; as well as CRC, CRC/C/15/Add.207, para 47.
- <sup>19</sup> Special Rapporteur on the Freedom of Religion, E/CN.4/2006/5/Add.3 paras 109, 121, 122.
- <sup>20</sup> CRC, "2003 Concluding Observations", CRC/C/15/Add.207, para 25; CERD and UNHCR, "UNHCR Submission to the UPR on Sri Lanka", p. 3, citing CERD/C/SR.1478, para 334.
- <sup>21</sup> HR Committee, CCPR/CO/79/LKA, para 19, see also "United Nations Common Country Assessment on Sri Lanka, 2006", pp. 21-22; ILO Committee of Experts on the Applications of Conventions and Recommendations, 2007, Geneva, Doc. No. 062007LKA111, para 1.
- <sup>22</sup> CAT, CAT/C/LKA/CO/2, para 13; CEDAW and HRC, A/57/38/ (PART I), paras 286, 290.
- <sup>23</sup> UNHCR, "Global Appeal Report 2008-2009, Strategies and Programmes, Geneva, 2007, pp. 237-238, UN RSG on IDPs, Press Release: "UN expert emphasizes sustainable and durable solutions for Sri Lanka's internally displaced persons (IDPs)", (27 December 2007).
- <sup>24</sup> Refer, A/HRC/WG.6/2/LKA/3.
- <sup>25</sup> Refer, for instance, the Minority Rights Group International (MRG)'s submission to UPR, pp. 1-2. See also Asian Legal Resource Center (ALRC), p. 3; Ilankai Tamil Sangam, p. 3; Manitham, p. 3.
- <sup>26</sup> Amnesty International, London, p. 2. See also International League for the Rights and Liberation of People, pp. 2-3.
- <sup>27</sup> World Organization Against Torture (OMCT), Geneva, p. 2. See also, Amnesty International , London, p. 2; Asian Center for Human Rights , New Delhi, p. 7.
- <sup>28</sup> Apart from official OHCHR documents, one source was used: "Sri Lanka's review in the Working Group", UPR Info, at <u>http://www.upr-info.org/IMG/pdf/Sri\_Lanka\_s\_review\_in\_the\_Working\_Group.pdf</u>.
- <sup>29</sup> Palestine, Nepal, the Phillipines made solely welcoming statements and did not offer recommendations, while Bahrain and India asked very general questions. Cuba and Belarus made very general recommendations.
- <sup>30</sup> Ireland, Ukraine, Canada, Brazil, France, Germany, Indonesia, Australia, Finland, the Netherlands, Morocco, and Lesotho.
- <sup>31</sup> Brazil, Indonesia, Morocco.
- <sup>32</sup> Canada, Sweden, Belgium, Portugal, Finland, Ireland, Germany, Denmark, Greece, USA.
- <sup>33</sup> Canada, the Netherlands, Ireland, Czech Republic, Poland, Greece, USA.
- <sup>34</sup> Belgium, Austria, Azerbaijan, Egypt, Iran, Portugal.
- <sup>35</sup> Romania, Poland, Japan, Guatemala, Iran.

- <sup>36</sup> Portugal, Luxembourg, Finland, New Zealand, Republic of Korea, Canada, Italy, Sweden, Belgium, Holy See, Romania, USA, Slovenia, Malaysia, Uruguay.
- <sup>37</sup> Finland, Germany, Greece.
- <sup>38</sup> Finland, the Netherlands.
- <sup>39</sup> Brazil, the Netherlands, UK, Russia.
- <sup>40</sup> Canada, New Zealand, Japan, UK, Greece, Australia.
- <sup>41</sup> Canada, Sweden, Portugal, France, New Zealand, Japan, Greece.
- <sup>42</sup> Sweden, Finland, Holy See, New Zealand, the Netherlands, Japan, Greece, Australia, France.
- <sup>43</sup> Belgium, Portugal, Denmark, France, Czech Republic, Guatemala.
- <sup>44</sup> Columbia, Turkey, Portugal, Guatemala, Luxembourg, DPR Korea, Republic of Korea, Iran.
- <sup>45</sup> Ireland, Finland, Poland, the Netherlands, Denmark.
- <sup>46</sup> Saudi Arabia, Mexico, Slovenia, New Zealand, Egypt.
- <sup>47</sup> New Zealand.
- <sup>48</sup> Denmark.
- <sup>49</sup> Tunisia, Venezuela.
- <sup>50</sup> Refer, A/HRC/WG.6/2/L.12, para 52.
- <sup>51</sup> Refer, A/HRC/WG.6/2/L.12, para 79.
- <sup>52</sup> Indonesia.
- <sup>53</sup> Czech Republic.
- <sup>54</sup> Brazil, the Netherlands, UK.
- <sup>55</sup> Refer, A/HRC/WG.6/2/L.12, para 13.
- <sup>56</sup> Ibid. at endnote 3.
- <sup>57</sup> The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.
- <sup>58</sup> Denmark, Sweden.
- <sup>59</sup> Denmark, Sweden, Japan, Canada.
- 60 Denmark.
- <sup>61</sup> Canada, Sweden, Japan.
- 62 Canada.
- <sup>63</sup> Indonesia, Bahrain, China.
- 64 Indonesia.
- 65 China.
- <sup>66</sup> Amnesty International, Human Rights Watch, Asian Legal Resource Center, Interfaith International, FORUM-ASIA, International Commission of Jurists (ICJ).
- <sup>67</sup> International Women's Rights Action Watch (IWRAW).
- <sup>68</sup> Interfaith International, ICJ.
- <sup>69</sup> Interfaith International.
- <sup>70</sup> Amnesty International, Human Rights Watch, ICJ.
- 71 ICJ.
- 72 IWRAW.

# The United Kingdom

The UK's UPR occurred during the First Session of the Working Group between 7 and 18 April 2008.

#### Members of the Troika

Egypt, the Russian Federation and Bangladesh

#### Consultation

Civil society consultation was conducted extensively prior to the UPR; UK circulated a draft national report among NGOs and reportedly asked for input at early stages of drafting and prior to finalising its report. The official report has however been criticised for not reflecting the NGOs, opinions that the government had sought.<sup>1</sup> Some within UK civil society circles felt that the consultation covered only a narrow section of civil society and therefore was not particularly inclusive.

#### State Report<sup>2</sup>

The UK's national report firstly dealt with the UK's international commitments to human rights and cited its commitment to human rights as demonstrated by the adoption of the Human Rights Act, 1998 (which came into force in 2000), which brings the explicit protection of human rights under UK law and the creation of the Joint Committee on Human Rights (which investigates all government bills and selects those with significant human rights implications for further examination).

The report goes on to discuss the UK's legislative framework: the possibility of bringing all equality legislation under a single Equality Act, the significance of the Freedom of Information Act (FOIA), 2000 which gives the public the right to information held by authorities and the Data Protection Act, 1998. The report also mentions the establishment of an Independent Police Complaints Commission in April 2004 and the Inquiries Act, 2005 which legislates for statutory safeguards on the use of public inquiries.

The report also addresses the UK's "terrorist challenge" at length, with the threat from terrorism being deemed "severe". The report states that "the protection of human rights is an integral and indispensable part of the UK's counterterrorism effort - and it is important to emphasise that being strong on counterterrorism does not mean being weak on human rights. On the contrary, respect for human rights is an important part of the fight against radicalisation." The report also claims that legislation has to adapt to meet the evolving threat, in line with the UK's international human rights obligations. Terrorists should be prosecuted using the most appropriate offences, which may be specific offences under criminal law or a specific terrorist offence. It is also acknowledged that UK legislation does contain powers that can be used where prosecution is not possible – for example, under the Prevention of Terrorism Act, 2005, the power to make Control Orders which impose restrictions on those reasonably suspected of being involved in terrorism. However, it is claimed that Control Orders affect a very small number of individuals and that they are not used arbitrarily – they are subject to mandatory review by the High Court at a hearing, applying judicial review principles, and the judge must agree with the Secretary of State's belief that there was a reasonable suspicion of involvement in terrorism-related activity. According to the report, in the case of terrorist suspects who are foreign nationals, an alternative means to disrupting their activity and reducing national security is deportation. The report also discusses the Counterterrorism Bill introduced to Parliament on 24 January which includes a proposal to allow an extension to the precharge detention limit in terrorist cases from the current 28 days to 42 days. Clarifying that the higher limit could only be made available if there was a joint report from the police and the Director of Public Prosecutions stating that there was a compelling operational need for it, the report also stresses that the detention of individual suspects would remain a matter for judges, not Parliament. Other issues discussed include accountability and oversight of the security services, and measures to balance the need for secrecy in intelligence gathering with accountability and safeguards. The UK also clarified its anti-torture

stance, stating that torture has been illegal in the UK since the seventeenth century, and discussed treatment of asylum seekers, especially stressing that while asylumseekers are not allowed to work, they are entitled to financial help.

#### **OHCHR** Compilation of UN Sources of Information<sup>3</sup>

Many important issues were raised in the compilation. In general, the UK's cooperation with the OHCHR was praised along with the Human Rights Act, 1998, however, concern was expressed about the degree of incorporation of treaty obligations into the domestic legal order.<sup>4</sup> Critical issues raised included disproportionate representation of minority groups in government and the civil service, persisting *de facto* discrimination in fields such as employment, housing and education, especially with respect to ethnic minorities and persons with disabilities,<sup>5</sup> attacks on asylum seekers, racial tensions and outbreaks of race-related violence,<sup>6</sup> racial "profiling" in counterterrorism efforts by law enforcement,<sup>7</sup> the extension of the length of detention without charge,<sup>8</sup> poor detention conditions in some facilities,<sup>9</sup> shoot-to-kill policies in the context of anti-terrorism, ill-treatment of prisoners by UK forces in Iraq and Afghanistan,<sup>10</sup> increase of domestic violence,<sup>11</sup> recruitment of minors in the armed forces,<sup>12</sup> entering and detention of juveniles within the criminal justice system,<sup>13</sup> lack of adequate protection for juveniles in detention,<sup>14</sup> and the persistence of poverty among vulnerable groups, especially among minorities, persons with disabilities, children and older persons.<sup>15</sup>

#### OHCHR Compilation of Stakeholder Submissions<sup>16</sup>

Twenty-five stakeholders made submissions to the review. The compilation of stakeholder contributions was largely in symmetry with the OCHR compilation of information from UN sources. The UK was praised for the establishment of the Equality and Human Rights Commission in October 2007, the UK's first national human rights institution.<sup>17</sup>

Some NGOs were critical of the UK's policies on human rights issues. Criticism was mounted in the following areas: the right to equality, the right to life, liberty and security of the person, the administration of justice and the rule of law, the right to privacy, marriage and family life, the right to an adequate standard of living, the right to education, migrants, refugees and asylum seekers, human rights and counterterrorism and situations in or in relation to specific regions or territories.

#### **Interactive Dialogue**

During the dialogue, a number of delegations welcomed the commitment and constructive approach of the UK towards the Universal Periodic review process. The UK was commended on its broad consultations with civil society in preparing the state report. About 38 delegations took the floor during the dialogue. While most countries addressed critical human rights issues, Azerbaijan, Mexico, Malaysia and Morocco chose to make solely welcoming statements. Furthermore, Argentina took the floor and only raised a primarily technical problem relating to its territorial dispute with the UK.

Questions regarding the UK's anti-terrorism legislation were raised by a number of countries. Many aspects of UK's anti-terror policies included the proposal to expand the length of pre-charge and pretrial detention,<sup>18</sup> tools and approach used to combat terrorism,<sup>19</sup> balancing any conflict between respecting human rights and fighting terrorism<sup>20</sup> and more specifically, compatibility of the counterterrorism policies and the Human Rights Act, 1998,<sup>21</sup> the impact of anti-terror laws,<sup>22</sup> and discrimination arising from counterterrorism policies.<sup>23</sup> Some of the recommendations included review of all counterterrorism legislation to ensure compliance with the highest human rights standards,<sup>24</sup> implementation of CAT and ICCPR to ensure proper treatment of those detained by the armed forces<sup>25</sup> and curbs on pretrial detention.<sup>26</sup>

Several questions regarding the rights of the child were raised, including the removal of UK's reservations to the Convention on the Rights of the Child (CRC) and the Optional Protocol on Children in Armed Conflict (OP-AC),<sup>27</sup> detention of asylum-seeking minors,<sup>28</sup> the relatively low age of criminal responsibility for minors,<sup>29</sup> corporal punishment<sup>30</sup> and child poverty.<sup>31</sup>

Other critical issues addressed during the dialogue included increasing prejudice against migrants, asylum seekers and racial minorities, <sup>32</sup> removal of the reservations on the Convention of the Elimination of Racial Discrimination (CERD), <sup>33</sup> the absence of legislation prohibiting discrimination based on colour or race, <sup>34</sup> amending the Race Relations Amendment Act, 2000, wherein at present, immigration officers can lawfully make a distinction on the basis of ethnicity or nationality, <sup>35</sup> amending provisions of the Terrorism Act designed for specific groups, <sup>36</sup> racial profiling, <sup>37</sup> restrictions on privacy due to security measures, <sup>38</sup> allegations of violations of humanitarian law by UK armed forces, <sup>39</sup> investigations made in the context of the Bloody Sunday massacre in 1970, <sup>40</sup> inclusion of a gender perspective in the UPR process, <sup>41</sup> incoherence in initiatives taken to tackle violence against women, <sup>42</sup> the efficacy and methodology of human rights institutions, <sup>43</sup> and detention conditions and the detainee's right to access to lawyers.<sup>44</sup>

The UK tried to respond in as much depth as possible to clusters of questions relating to one umbrella issue (for instance, child rights and anti-terrorism policies). However, due to time constraints, most of the responses were brief and lacking satisfactory quantitative assessments. Furthermore, the UK, while stressing its commitment to human rights, refused to change its stance on criticisms on specific aspects of its counterterrorism strategy, especially extension on the length of pretrial detentions. Issues that were raised in the NGO submission, as well as the UN compilation, but were not raised during the dialogue included the right to health, issues related to asylum seekers and refugees including inadequate adherence to the international legal principle of non-refoulement and the right to a fair trial, human rights defenders, implementation of the right to information, and the proliferation of UK's arms trade, especially with human rights violators.

#### Plenary<sup>45</sup>

The plenary session took place on 10 June 2008, wherein the UK delegation addressed recommendations that were made in the final report adopted by the Working Group. While the UK claimed that most of the recommendations were acceptable and will be implemented, they were criticised for not accepting several recommendations, including recommendations to withdraw an interpretative statement to Article 4 of ICERD;<sup>46</sup> shorten pretrial detention;<sup>47</sup> to consider any person detained by UK armed forces as being under UK jurisdiction;<sup>48</sup> lift all reservations to ICCPR and CAT and extend both instruments to all its overseas territories;<sup>49</sup> accede to the International Convention on the Rights of Migrant Workers and their Families (ICRMW);<sup>50</sup> facilitate access by the International Red Cross to its prisons;<sup>51</sup> and lift reservation to the CRC provision on separating children from adults in prisons.<sup>52</sup> Other states commended the UK on the granting of equal status to economic, social and cultural rights as well as civil and political rights<sup>53</sup> and its responses to the recommendations made.<sup>54</sup> Civil society groups called on the government to step up efforts to improve conditions for children,<sup>55</sup> to sign the ICRMW and withdraw reservations to the ICRC,<sup>56</sup> thoroughly investigate violations caused by police actions,<sup>57</sup> and to harmonise counterterrorism legislation with international human rights standards in order to curb the spread of racism and intolerance.<sup>58</sup> In the closing statement, the delegation addressed the issue of pretrial detention, and stressed that the longer 42-day period would only be applied in extenuating circumstances.

#### Endnotes

- <sup>1</sup> "Algeria criticises UK's human rights record", Human Rights Watch, Judith Sunderland, Published in Open Democracy: Our Kingdom, (23 April 2008).
- <sup>2</sup> Refer, A/HRC/WG.6/1/UK/1.
- <sup>3</sup> Refer, A/HRC/WG.6/1/UK/2.
- <sup>4</sup> Committee on the Elimination of Racial Discrimination (CERD), the HR Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR) and Committee on the Rights of the Child (CRC).
- <sup>5</sup> CESCR.

6 CERD.

- <sup>7</sup> The Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism.
- <sup>8</sup> CERD.
- 9 CAT.
- <sup>10</sup> The Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism.
- 11 CESCR.
- <sup>12</sup> CRC.
- <sup>13</sup> Ibid.
- <sup>14</sup> Ibid.
- <sup>15</sup> CESCR and CRC.
- <sup>16</sup> Refer, A/HRC/WG.6/1/UK/3.
- <sup>17</sup> Refer, UPR submission by Children's Rights Alliance for England (CRAE), p. 1.
- <sup>18</sup> Syria, Switzerland, Japan.
- <sup>19</sup> Cuba, Malaysia.
- <sup>20</sup> Pakistan.
- <sup>21</sup> Ghana.
- <sup>22</sup> Sweden, Algeria.
- <sup>23</sup> Iran.
- <sup>24</sup> Cuba, Ghana, the Netherlands.
- <sup>25</sup> Algeria, Switzerland, Egypt.
- <sup>26</sup> Algeria, Switzerland, Russia.
- <sup>27</sup> Japan, Russian Federation, Indonesia.
- <sup>28</sup> Indonesia, Slovenia.
- <sup>29</sup> Brazil.
- <sup>30</sup> Italy, Sweden, Slovenia, France.
- <sup>31</sup> Even though no country explicitly addressed the persistence of child poverty, the national delegation informed the meeting about strategies to halve child poverty by 2010. France then asked for more details regarding such strategies.
- <sup>32</sup> Brazil, India, Indonesia, Iran.
- <sup>33</sup> China, Cuba, Germany, Indonesia, India.
- <sup>34</sup> India.
- <sup>35</sup> Germany.
- <sup>36</sup> Syria.
- <sup>37</sup> Brazil, Indonesia.
- <sup>38</sup> Canada.
- <sup>39</sup> Sudan.
- <sup>40</sup> Sri Lanka.
- <sup>41</sup> Slovenia.
- <sup>42</sup> India.
- <sup>43</sup> Belgium, New Zealand and Italy.
- <sup>44</sup> Russian Federation, United States.
- <sup>45</sup> The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.
- <sup>46</sup> Recommendation by Egypt and Cuba.
- <sup>47</sup> Recommendation by Algeria, Switzerland, Russian Federation. Critique by Algeria.
- <sup>48</sup> Recommendation by Switzerland.
- <sup>49</sup> Recommendation by Algeria. Critique by Algeria.
- $^{\scriptscriptstyle 50}\,$  Recommendation by Algeria, Ecuador and Egypt. Critique by Algeria.
- <sup>51</sup> Recommendation by Algeria. Critique by Algeria.
- <sup>52</sup> Recommendation by Indonesia. Critique by Algeria.
- <sup>53</sup> Nigeria.

- <sup>54</sup> Russian Federation. However, the compliment was followed by a tongue-in-cheek remark which stated that the UK's responses to the recommendations suggested that there was "no ideal country in human rights".
- <sup>55</sup> International Save the Children Alliance (ISCA).

56 Ibid.

- <sup>57</sup> Amnesty International.
- <sup>58</sup> Islamic Human Rights Commission.

# Zambia

Zambia's UPR occurred during the Second Session of the Working Group designed to implement the UPR mechanism between 5 and 16 May 2008.

#### Members of the Troika

Senegal, Switzerland and the Philippines

#### Consultation

Zambia's report explicitly stated that it was prepared through broad inter-ministerial consultations, consultations with the National Human Rights Commission and with civil society groups engaged through nine workshops, firstly in order to raise awareness around the UPR process, and secondly to collect information that could be incorporated into the state report. But no mention is made of the identity of the consulted civil society groups, or the methodology used to collate information.

#### **Report by the State<sup>1</sup>**

The state report is divided into ten distinct parts. It begins with a brief overview of the political and legal structure in place and includes the National Human Rights Commission. Chapters three to nine, address various human rights achievements, as well as challenges. Among the issues raised are civil and political rights, discrimination based on race, torture, economic and social rights, gender-based discrimination, children's rights, freedom of religion, slavery and bonded labour, adequate housing and the right to health. The main challenges recognised included death penalty, poor prison conditions, housing and sanitation, poverty, poor labour conditions, access to safe drinking water and provision of health care services.

The report does not address human rights issues such as threats to human rights defenders, rights of migrants and refugees and efforts to combat HIV/AIDS. In general, quantitative assessments (statistical data, performance of initiatives, etc.) and examples of violations were not given in the report.

#### OHCHR Compilation of Information from UN Sources<sup>2</sup>

The compilation addressed a wide range of issues, and in general, recommended that Zambia ratify the OP-CEDAW, ICCPR-OP-2, OP-CRC-SC, OP-CRC-AC, ICRMW, CPD and CED. The Committee Against Torture noted with satisfaction the withdrawal of reservation by Zambia to Article 20 (initiation of an enquiry procedure) of the Convention, as well as its commitment to withdrawing objections with respect to Articles 21 (inter-state complaints) and 22 (individual complaints). The UN compilation raises issues that include discrimination<sup>3</sup> and violence against women;<sup>4</sup> torture and abuses by police;<sup>5</sup> violence against children;<sup>6</sup> child labour;<sup>7</sup> overcrowding of prison and poor detention facilities;<sup>8</sup> corporal punishment;<sup>9</sup> poverty and extremely low standards of living;<sup>10</sup> the lack of precedence given to statutory law over customary law due to low level of awareness; lack of trained advocates<sup>11</sup> and access to health care services,<sup>12</sup> especially victims of HIV/AIDS.<sup>13</sup> The report also commended the baseline point of the need to transform the Zambian legal system in general, and its commitment to protect human rights.<sup>14</sup>

#### **OHCHR Compilation of Stakeholders Submissions**<sup>15</sup>

A total of eight civil society stakeholders made submissions to the UPR, including several child rights organisations, and a handful of other important local and international NGOs.<sup>16</sup> Zambia's reluctance to ratify OP-CRC-AC, OP-CRC-SC and the OP-CEDAW, and uphold its pledged commitments was noted.<sup>17</sup>

Furthermore, many of the issues raised were largely complementary to the OHCHR compilation of information from UN sources and the state report. These included discrimination against women and children, endemic overcrowding and poor facilities in prisons, high prevalence of HIV/AIDS, restrictions on freedom of expression under the Defamation Act, poverty, persistently poor health care, housing and other social services. Regarding the constitutional and legislative framework to protect human rights, the abrogation of basic rights during emergency, exceptions to non-discrimination in personal and customary laws, absence of the definition of torture, criminalisation of torture, ineffective mechanisms to protect women's property rights, the unsatisfactory pace of reforming child-related legislation, and the lack of resources and inefficiency of the Zambian Human Rights Commission were noted. Among the initiatives applauded were the massive roll-out of HIV treatment to victims, and the government's considerable progress in promoting and implementing the right to education.

#### Interactive Dialogue<sup>18</sup>

Preferring to reply only to written questions submitted in advance the Zambian delegation headed by Ms Gertrude Imbwae, Permanent Secretary to the Minister of Justice made a very brief presentation that consisted mostly of an explanation of how the state report was drafted, and the methodology of consultations with civil society. Replies addressed issues surrounding the death penalty,<sup>19</sup> abuses inflicted by police forces,<sup>20</sup> gender-based violence,<sup>21</sup> women human rights defenders being subject to institutional discrimination and stigmatisation,<sup>22</sup> restriction of freedom of expression, intimidation of the public through libel laws and the Defamation Act,<sup>23</sup> the problem of overcrowded prisons,<sup>24</sup> and an announcement stating that Zambia will issue a standing invitation to all UN Special Procedures<sup>25</sup> and made good on the latter by issuing an invitation in time for the plenary.

During the interactive dialogue, 39 states took the floor, and most questions addressed various human rights issues<sup>26</sup> including questions surrounding the National Human Rights Commission,<sup>27</sup> cooperation with human rights mechanisms,<sup>28</sup> the use of the death penalty,<sup>29</sup> protection of women's rights,<sup>30</sup> rights of the child<sup>31</sup>, the rights of minorities,<sup>32</sup> rights of disabled persons,<sup>33</sup> poor detention conditions,<sup>34</sup> the right to health<sup>35</sup> prevalence of HIV/AIDS,<sup>36</sup> torture,<sup>37</sup> freedom of expression<sup>38</sup> and independence of the press,<sup>39</sup> right to education,<sup>40</sup> access to water,<sup>41</sup> widespread poverty,<sup>42</sup> access to justice,<sup>43</sup> freedom of association,<sup>44</sup> and the trafficking of persons.<sup>45</sup>

Zambia's responses were largely brief, yet the delegation tried to address as many issues as possible. Among the issues that the delegation did not choose to address were torture, pretrial detention and corruption. The delegation was largely congratulated on the broad consultations it held with civil society groups. As a part of its responses, Zambia also provided details regarding a few of its initiatives; however, just as in the state report, quantitative assessments and statistical data, as well as examples of violations or critical challenges were missing.

#### Plenary<sup>46</sup>

Zambia's plenary took place on 12 June 2008. The opening statement thanked the Working Group for the positive report, and mentioned that the delegation had learnt a lot during consultations with civil society groups. The delegation also announced that the government had signed the Convention on the Rights of Persons with Disabilities (CPD) in May 2008. During the interactive dialogue, seven states took the floor, and while some noted positive progress<sup>47</sup> including constructive engagement during the UPR process,<sup>48</sup> efforts to solve gender issues,<sup>49</sup> progress in incorporating CEDAW into domestic law,<sup>50</sup> holding broad consultations with civil society,<sup>51</sup> issuing a standing invitation to Special Procedures<sup>52</sup> and efforts to address prison conditions.<sup>53</sup> Other states noted various challenges faced by Zambia in meeting its human rights commitments.<sup>54</sup> Uganda specifically addressed challenges related to gender-based violence and the need to reduce maternal and child mortality, while also noting that prevalence of HIV has compounded the problem of child labour as orphans were forced to work for a living. Zambia was also praised for showing willingness to reform laws (including its criminal code) on freedom of expression and in relation to prosecution of journalists.<sup>55</sup> It was further praised for accepting many recommendations dealing with women and children's rights,<sup>56</sup> and hopes were expressed that Zambia would abolish the death penalty.<sup>57</sup> Nigeria also called on the international community to complement Zambia's efforts to promote and protect human rights. Only one NGO took the floor;<sup>58</sup> it voiced concerns on issues such as providing free and compulsory education to the girl child, concern over street children, follow-up on the Committee on the Rights of the Child's recommendations, high prevalence of HIV/AIDS and the need for a protection programme for orphans. In the closing statement, the delegation thanked all the states that participated in the UPR process, and called on the international community to play a "positive role" in fulfilling the UPR's objectives.

# **Endnotes**

- <sup>1</sup> Refer, A/HRC/WG.6/2/ZMB/1.
- <sup>2</sup> Refer, A/HRC/WG.6/ZMB/2, (25 March 2008).
- <sup>3</sup> The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, paras13, 16; CESCR, Concluding observations, E/C.12/1/Add.106, adopted on 13 May 2005, paras14, 26; UN-HABITAT submission to the UPR on Zambia, pp. 2, 5; CERD, Concluding observations, CERD/C/ZMB/CO/ 16, adopted on 16 August 2005, para11.
- <sup>4</sup> The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, para19; CEDAW, Concluding observations, adopted on 4 June 2002, A/57/38 (Part-II), paras 238 and 239; CAT, Concluding observations, A/57/44, adopted on 20 November 2001, paras 7(c) and 8(h); CRC, Concluding observations, CRC/C/15/Add.206, adopted on 6 June 2003, para 64.
- <sup>5</sup> The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, para 21; Special Rapporteur on Torture, E/CN.4/2006/6/Add.1, para 551; CRC, Concluding observations, CRC/C/ 15/Add.206, adopted on 6 June 2003, paras 32 and 33.
- <sup>6</sup> CRC, Concluding observations, CRC/C/15/Add.206, adopted on 6 June 2003, paras 21,22, 30, 31, 32, 44, 45, 64; The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, paras 6 and 22.
- <sup>7</sup> 2005 Zambia MDG report, Lusaka, 2005, p. 8, at www.undp.org.zm/undptest/docs/MDGR2005.pdf.
- <sup>8</sup> The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, para 23 and CESCR, Concluding observations, E/C.12/1/Add.106, adopted on 13 May 2005, paras 28 and 51; CAT, Concluding observations, A/57/44, adopted on 20 November 2001, paras 7(b) and 9.
- The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, paras.6 and 22; CRC, Concluding observations, CRC/C/15/Add.206, adopted on 6 June 2003, paras 30, 31.
- <sup>10</sup> 2005 Zambia MDG report, Lusaka, 2005, p. 8, at www.undp.org.zm/undptest/docs/MDGR2005.pdf; CESCR, Concluding observations, E/C.12/1/Add.106, adopted on 13 May 2005, paras 21, 26, 43, 48; CRC,Concluding observations, CRC/C/15/Add.206, adopted on 6 June 2003, paras 54, 55; UN-HABITAT submission to the UPR on Zambia, pp. 3, 4.
- <sup>11</sup> The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, paras 9 and 14; CERD, Concluding observations, CERD/C/ZMB/CO/16, adopted on 16 August 2005, para 19.
- <sup>12</sup> The Human Rights Committee, Concluding observations, CCPR/C/ZMB/CO/3, adopted on 20 July 2007, para 23 and CESCR, Concluding observations, E/C.12/1/Add.106, adopted on 13 May 2005, paras 24, 28, 29, 51, 52, 58; CAT, Concluding observations, A/57/44, adopted on 20 November 2001, paras 7(b), 9; CRC, Concluding observations, CRC/C/15/Add.206, adopted on 6 June 2003, paras 46, 47, 68, 69; CEDAW, Concluding observations, adopted on 4 June 2002, A/57/38 (Part-II), paras 242, 243.
- <sup>13</sup> CRC, Concluding observations, CRC/C/15/Add.206, adopted on 6 June 2003, paras 50, 51, 54, 65; CESCR, Concluding observations, E/C.12/1/Add.106, adopted on 13 May 2005, paras 23, 26, 30 45, 53; CEDAW, Concluding observations, adopted on 4 June 2002, A/57/38 (Part-II), paras 244, 245; UNAIDS, Annual Report 2006, Geneva, 2007, p. 14.
- <sup>14</sup> CESCR, Concluding observations, E/C.12/1/Add.106, adopted on 13 May 2005, paras 5 and 37; UN-HABITAT submission to the UPR on Zambia, p. 1; UNICEF submission to the UPR on Zambia, p. 4; Special Representative of the Secretary-General on Human Rights Defenders, E/CN.4/2006/95/Add.5, para1788.
- $^{\rm 15}$   $\,$  For the summary of the submissions, refer to A/HRC/WG.6/2/ZMB/3.  $\,$
- <sup>16</sup> Including Commonwealth Human Rights Initiative (CHRI), Human Rights Watch (HRW), and World Organisation against Torture (OMCT).
- <sup>17</sup> Commonwealth Human Rights Initiative, New Delhi, India, UPR Submission, February 2008, p.1; Children in Need Network, Zambia Civic Education Association, Plan-International, Save the Children, Norway and Sweden, Lusaka, Zambia, joint UPR Submission, February 2008, p. 6.
- <sup>18</sup> Refer, A/HRC/WG.6/2/L.9 for summary of the interactive dialogue.
- <sup>19</sup> Denmark, United Kingdom (UK), Sweden.
- <sup>20</sup> Denmark, UK, Sweden.
- <sup>21</sup> Denmark, UK, Sweden.
- <sup>22</sup> Ireland.
- <sup>23</sup> Ireland.
- <sup>24</sup> Ireland.
- <sup>25</sup> Latvia.
- <sup>26</sup> With the exception of Latvia and Botswana, all the states taking the floor raised critical issues.
- <sup>27</sup> France, UK, Azerbaijan.
- <sup>28</sup> Russia, Mexico.

- 29 France, Netherlands, Mexico, Chile, UK, Holy See.
- 30 China, Brazil, Austria, Mexico, Angola, Austria, Chile, Morocco, Slovenia, France, Chad, Italy.
- 31 Austria, Libya, Angola, Austria, Republic of Korea.
- <sup>32</sup> Russia.
- <sup>33</sup> Slovenia.
- <sup>34</sup> Denmark, Russia, UK, Nigeria.
- <sup>35</sup> Russia, New Zealand.
- <sup>36</sup> Russia, Slovenia, Canada, Syria.
- <sup>37</sup> Mexico, France.
- <sup>38</sup> Norway, Mexico.
- <sup>39</sup> Norway, UK, Ireland.
- <sup>40</sup> Cuba, South Africa, Italy, Morocco.
- <sup>41</sup> DR Congo, Tunisia, South Africa.
- <sup>42</sup> Chile, Germany.
- <sup>43</sup> Ghana, UK.
- 44 Egypt. 45 US.
- 46 The source used was the ISHR Council Monitor's Daily Updates during the 8th Session of the Council.
- 47 China.
- <sup>48</sup> Botswana.
- <sup>49</sup> Algeria.
- <sup>50</sup> Ireland.
- <sup>51</sup> Ireland.
- <sup>52</sup> Ireland.
- <sup>53</sup> Ireland.
- <sup>54</sup> Nigeria, Botswana, Switzerland.
- <sup>55</sup> Ireland.
- <sup>56</sup> Switzerland.
- 57 Ireland.
- <sup>58</sup> Franciscans International.

# Annexure II Pledges made

Bangladesh

Apr. 12. 2006 5:18PM



# PERMANENT MISSION OF BANGLADESH TO THE UNITED NATIONS

No. 214/

P. 2

227 East, 45th Street, 14th Floor, New York, NY 10017 Tel: (212) 867-3434 • Fax: (212) 972-4038 • E-mail: bangladesh@un.int web site: www.up.int/bangladesh

#### No. PMBNY/Elections/HRC/06

The Permanent Mission of the People's Republic of Bangladesh to the United Nations presents its compliments to the Permanent Mission of all Member States to the United Nations and with reference to the General Assembly resolution A/60/L.48 has the honour to inform that the Government of Bangladesh has decided to present its candidature for membership of the Human Rights Council (HRC) for the term 2006-2008, elections for which will be held on 09 May 2006 during the 60<sup>th</sup> session of the General Assembly.

The Permanent Mission of Bangladesh, while seeking support for this candidature, has the further honour to highlight the following:

 Bangladesh is currently a member of the Commission of Human Rights for the term 2006-2008;

- Bangladesh's deep commitment to the promotion and protection of human rights of all its citizens emanates from its constitutional obligation;
- c. Bangladesh has been at the forefront of promotion and protection of all human rights at national, regional and international levels. This has been reflected in Bangladesh's adherence to all major human rights instruments;
- d. Bangladesh has actively and constructively participated in the work of the CHR. During her membership of the Commission from 1983 to 2000, Bangladesh fully cooperated with the Commission in fulfilling its mandate. She underscored the importance of genuine dialogue and cooperation among nations as well as of capacity building of the Member States as essential elements towards promotion and protection of human rights;
- c. As Vice-Chair of the Bureau of the Human Rights Commission in 1998, Bangladesh was actively involved in the review process aiming at enhancing the efficiency of the working methods of Commission and rationalize its work;
- f. Bangladesh also hosted several Special Rapporteurs in the recent years in further demonstration of her willingness to cooperate with UN human rights machinery;
- g. At the national level, Bangladesh, a democratic and pluralistic polity, is fully committed to the principles of good governance, democracy, rule of law and promotion and protection of human rights and fundamental freedom of all her citizens, with particular attention to the rights of women, children and minorities.

-2-

h. If elected to the Council:

- Bangladesh would fully cooperate with the Council in its work of promotion and protection of all human rights through dialogue, cooperation and capacity building;
- II. Bangladesh would remain prepared to be reviewed under the universal periodic review mechanism.
- III. Bangladesh would endeavour to further integrate the promotion and protection of human rights into her national development policy with special attention to the rights of women, children, minorities and persons with disabilities;

In view of the above and given the excellent bilateral relations and cooperation between our governments and peoples, the Government of Bangladesh would be gratefial for the valuable support of your Governments to the candidature of Bangladesh for election to the Human Rights Council for the term 2006-2008.

The Permanent Mission of the People's Republic of Bangladesh to the United Nations avails itself of this opportunity to renew to the Permanent Mission of all Member States to the United Nations the assurances of its highest consideration.



Permanent Missions of all Member States to the United Nations New York



prik 2006

New York



### PERMANENT MISSION OF BANGLADESH TO THE UNITED NATIONS

227 East, 45th Street, 14th Floor, New York, NY 10017 Tel: (212) 867-3434 • Fax: (212) 972-4038 • E-mail: baugladesh@un.int web site: www.un.int/bangladesh

No. PMBNY/Elections/HRC/06

The Permanent Mission of the People's Republic of Bangladesh to the United Nations presents its compliments to the Department of General Assembly and Conference Management of the United Nations in New York and has the honour to refer to our Note Verbale of even number dated 21 March 2006 announcing candidature of Bangladesh to the Human Rights Council for the term 2006-2008, the elections to which are scheduled for 09 May 2006 during the 60<sup>th</sup> session of the General Assembly.

The Permanent Mission has the further honour now to elaborate on Bangladesh's voluntary pledges towards human rights in the form of an Aid-Memoire.

The Permanent Mission would deeply appreciate if the Aid-Memoire is posted in the website as an additional element to the two pages posted already.

The Permanent Mission of People's Republic of Bangladesh to the United Nations avails itself of this opportunity to renew to the Department of General Assembly and Conference Management of the United Nations in New York the assurances of its highest consideration.

The Department of General Assembly and Conference Management of the United Nations General Assembly Affairs Room #S-2925A New York

(Attention: Mr. Ion Botnaru, Chief of Branch, Phone:212 963-2336 Fax: 212 963 4230)

# AIDE MEMOIRE ON BANGLADESH'S VOLUNTARY PLEDGES TOWARDS HUMAN RIGHTS

#### INTRODUCTION

Bangladesh is committed to ensuring all human rights—civil, political, economic, social and cultural rights, including the right to development—and fundamental freedoms to all its citizens and without any discrimination.

Bangladesh is committed to building a society free from exploitation in which the fundamental human rights and freedom, equality and justice, political, economic and social rights, are secure.

Bangladesh believes in indivisibility, universality, non-selectivity and interdependence of human rights. We favour a holistic approach in this respect with particular emphasis on the right to development.

It is because of her commitment to the promotion and protection of human rights and fundamental freedoms of all its citizens that Bangladesh actively and constructively participated in the negotiations leading up to the creation of the Human Rights Council.

Bangladesh served the Commission on Human Rights, with distinction, during 1983-2000, and was elected to the Commission for the term 2006-2008.

#### HUMAN RIGHTS IN THE CONSTITUTION OF BANGLADESH

The constitution of Bangladesh, which embodies the principles and provisions of the Universal Declaration of Human Rights, is the supreme law of the Republic. It guarantees the following rights, among others, to all its citizens without any discrimination:

- Democracy and human rights: The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.
- Provision of basic necessities: The provision of the basic necessities of life, including food, clothing, shelter, education and medical care are responsibilities of the State.
- Free and compulsory education: The State shall adopt effective measures for the purpose of establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children.
- Non-discrimination: (1) The State shall not discriminate against any citizen on grounds only of
  religion, race, caste, sex or place of birth. (2) Women shall have equal rights with men in all
  spheres of the State and of public life. (3) No citizen shall, on grounds only of religion, race,
  caste, sex or place of birth be subjected to any disability, liability, restriction or condition with
  regard to access to any place of public entertainment or resort, or admission to any educational
  institution. (4) Nothing in this article shall prevent the State from making special provision in
  favour of women or children or for the advancement of any backward section of citizens.

- Equality of opportunity.
- Equality before law.
- Protection of right to life and personal liberty.
- Prohibition of forced labour.
- Freedom of movement, of assembly, of association, of thought and conscience, of speech, of
  profession or occupation, and of religion.
- Rights to property.

ACHIEVEMENTS OF BANGLADESH IN FULFILLING HER CONSTITUTIONAL OBLIGATIONS

Bangladesh has been endeavouring to meet its constitutional obligations as well as its international commitments towards promoting and protecting human rights of its citizens through, among others, enacting legislations and adopting administrative measures to implement them, as well as through implementation of several socio-economic development programmes. Some of the steps taken by Bangladesh are:

- Bangladesh has, through legislative and executive measures, ensured freedom of speech and expression, freedom of the press, and freedom of thought and conscience. Every citizen enjoys the right to religion, education, association, assembly, occupation, trade, etc. without any discrimination. Bangladesh has one of the most independent print and electronic media in the world.
- Bangladesh has established itself as a democratic and pluralistic polity through its unwavering
  commitment to the principles and practices of good governance, democracy, rule of law, and
  promotion and protection of all human rights and fundamental freedoms of all her citizens with
  particular attention to the rights of women, children, minorities, disabled and other vulnerable
  sections of her population.
- Bangladesh has made significant progress in economic emancipation of her people in terms of
  sustained economic growth, improvement of per capita income, increasing food security,
  enhanced disaster management capability, and high achievements in social sector particularly
  women empowerment and health care including reduced maternal and child mortality rates.
  Indigenous concepts such as micro-credit and non-formal education have played significant role
  for these achievements. A vibrant civil society including the NGOs played a complementary
  role.
- Bangladesh believes that ensuring the right to education is an essential step in providing her people with the right to development. "Education for All" is, therefore, the highest priority of the Government of Bangladesh, particularly of the girls. Education for girls up to 12<sup>th</sup> grade is free in Bangladesh.

- Bangladesh is committed to its fight against corruption, which she considers an obstacle to
  ensuring a better living standard of her people. We have established an Independent AntiCorruption Commission headed by a retired High Court judge. The Commission can conduct
  investigations into the offences under Anti Corruption Act 2004 and for the punishable offences
  under Prevention of Corruption Act 1947 through its own investigation unit. It can also initiate
  suo moto investigation into any case of malpractice.
- Bangladesh, in fulfilling its obligation to furthering the promotion and protection of human rights has decided to establish an independent National Human Rights Commission. Much work in this regard has already been done and the Commission is expected to be functional soon.
- Bangladesh is convinced that independence of judiciary is critical in ensuring good governance and rule of law, and by extension protection of human rights and fundamental freedoms of its citizens. The separation of the Judiciary from the Executive is currently under active process.
- Bangladesh believes that terrorism is antithetical to promotion and protection of human rights. In fulfilling her commitment to combat terrorism, she has ratified twelve of the thirteen UN Conventions on terrorism, and is contemplating constitutional procedure for the remaining one. She is also a party to SAARC (South Asian Association for Regional Cooperation) Regional Convention for Terrorism.
- Bangladesh has put in place appropriate legislative measures to promote the rights of children and women, focusing mainly on their protection from violence, abuse, and discrimination. A National Advisory Committee has been established to combat trafficking. Stringent laws have been enacted to protect the women and children, in particular girls, from being trafficked and abused. These include the Suppression of Immoral Trafficking Act of 1993, the Suppression of Violence Against Women and Children Act 2000, which was amended in 2003, Acid Crimes Control Act 2002 and Speedy Trial Tribunal Act 2002.
- Bangladesh is one of the few countries that have a separate Ministry solely devoted to the welfare of women and children.
- Both the Prime Minister and the Leader of the Opposition in the National Parliament of Bangladesh are women. In addition, we have 45 women members in the 345-member unicameral national legislature.
- The nation also has in its credit some 12,000 women elected members in the local government bodies.
- At the regional level, Bangladesh adheres to the Kathmandu understanding on children.
- Bangladesh has ratified the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002.

BANGLADESH'S CONTRIBUTION TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AT GLOBAL LEVEL

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- In different international fora, particularly at the UN, Bangladesh plays a constructive role through the promotion of cooperation and dialogue as well as a consensus-builder.
- Bangladesh is a State Party to more than 18 major international human rights instruments, including:
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Rights of the Child (CRC); and its two optional protocols;
- 4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and its optional protocol;
- 5. International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- 6. Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others;
- Convention on the Prevention and Punishment of the Crime of Genocide;
- International Convention on the Suppression and Punishment of Crime of Apartheid;
- 9. Slavery Convention of 1926 and subsequent protocols.
- 10. Convention on the Political Rights of Women;
- 11. Convention on Consent to Marriage, Minimum Age for and Registration of Marriage; and
- 12. Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.
- Bangladesh is contemplating constitutional procedures to adhere to the remaining international human rights instrument.
- Bangladesh has always actively and constructively participated in the work of the Commission on Human Rights (CHR).
- During her membership in the Commission from 1983 to 2000, and in 2006, Bangladesh made significant contribution to the Commission's work in fulfilling its mandate. She attached particular importance to the necessity of genuine dialogue and cooperation among nations as well as capacity building of Member States as essential elements towards the promotion and protection of all human rights for all.
- Bangladesh has always extended full cooperation to the human rights treaty bodies, and made good use of their advices in improving her human rights situations.
- Bangladesh's significant contribution to the work of the Commission on Human Rights has earned laurels. She has hosted, and extended full cooperation to, several special rapporteurs in recent years in further demonstration of her willingness to cooperate with the UN human rights machinery.

- Bangladesh has fully cooperated with the Commission's special procedures and mechanisms. Some of the recent interactions were with:
- The Special Rapporteur on the independence of judges and lawyers;
- I. The Special Representative of the Secretary-General on the situation of human rights II. defenders:
- III. The Special Rapporteur on freedom of religion or belief;
- IV. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- Working Group on Enforced or Involuntary Disappearances;
- VI. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- VII. Working Group on Arbitrary Detention;
- VIII. The Special Rapporteur on the question of torture;
- IX. The Special Rapporteur on the sale of children, child prostitution and child pornography;
- The Special Rapporteur on the situation of human rights and fundamental freedoms of х. indigenous people;
- XI. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; and
- XII. The Special Rapporteur on the right to food.
- Bangladesh is a leader in UN peacekeeping. Our soldiers are working in difficult circumstances to protect the lives and human rights of peoples in conflict situations, particularly women and children. The UN Secretary-General has rightly said that Bangladesh is a model member of the UN providing leadership among the least developed countries and other forums and contributing substantially to peacekeeping and humanitarian operations.

#### VOLUNTARY PLEDGES

It is from this perspective that Bangladesh has proposed her candidature for election to the newly created Human Rights Council. She hopes that through cooperation and dialogue as well as through promoting capacity building of the States, Bangladesh will be able to build on the past achievements and contribute more and more to the mandated task of the Council. Bangladesh would utilise the opportunity to further promote and protect all human rights both at home and abroad.

If elected to the Human Rights Council, Bangladesh would:

- Extend its fullest cooperation to the Council in its work of the promotion and protection of all human rights and fundamental freedoms for all without distinction of any kind and in a fair I. and equal manner.
- Support the Council in its work guided by the principles of universality, impartiality, Π. objectivity and non-selectivity, constructive international dialogue and cooperation.
- Emphasise on meaningful dialogue and cooperation with the Member States, as well as on advisory services, technical assistance and capacity building required to fulfil their human III. rights obligations.

IV. Actively participate in the Council's work to review and rationalise and improve the Commission's mandates, mechanisms, functions and responsibilities.

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- V. Remain prepared to be reviewed under the universal periodic review mechanism during its tenure in the Council under terms, conditions and modalities to be developed by the Council.
- VI. Continue its journey towards development of its entire people with particular attention to empowerment of women and other vulnerable sections of the population, primarily through the application of indigenous concepts.
- VII. Strengthen its fight against corruption and also against terrorism. She would continue to ensure independence of the Anti-Corruption Commission.
- VIII. Intensify its efforts, while framing its national policies and strategies, to uphold the fundamental principles enshrined in the constitution, those of the Universal Declaration of Human Rights, as well as those of the international and regional human rights instruments to which she is a party.
- Strengthen its efforts to meet its obligations under the treaty bodies to which she is a party.
- Contemplate adhering to the remaining international and regional human rights instruments.
- XI. Continue to cooperate with the special procedures and mechanisms of the Council with a view to further improve its human rights situations.
- XII. Continue to promote the constructive role of the NGOs in the work of the Council, and would strive to promote effective participation of the NGOs from developing countries in the work of the Council.
- XIII. Endeavour to further integrate the promotion and protection of human rights and fundamental freedoms into her national policies, including that on development and poverty eradication, with special focus on the rights of women, children, minorities and persons with disabilities.
- XIV. Continue to work towards further strengthening and consolidating the institutional structures that promote good governance, democracy, human rights and rule of law.
- XV. Continue to endeavour, through its national development policies, to ensure provision of the basic necessities of her people including food, clothing, shelter, education and primary health care.
- XVL Establish the National Human Rights Commission as soon as possible.

XVII.Separate the judiciary and the executive as soon as feasible.

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/pmf.-Mission Permanente de la République du Camerour auprès des Nations Unies

No. 167, GREN.



22 East 73rd Street New York, N.Y. 10021 Id: (212) 794-2295 Fax: (212) 249-0533

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Permanent Mission of the Republic of Camercon to the United Nations

APR 1 8 2008 New York, La

# Cameroon

La Mission Permanente de la République du Cameroun auprès des Nations Unies à New York présente ses compliments au Secrétariat Général des Nations Unies et a l'honneur de porter à sa connaissance que le Gouvernement camerounais a décidé de présenter la candidature du Cameroun au Conseil des Droits de l'Homme dont les élections auront lieu le 9 mai 2006.

Attaché aux droits de l'homme, le Cameroun est conscient des actions importantes à consolider pour bâtir une véritable société de droit et pour accéléter l'avènement d'une culture des droits de l'homme voulue, partagée et vécue par tous. Il œuvre sans relâche à cet égard, aux niveaux national, régional et international.

- Au niveau national, le préambule de sa Constitution qui en est une partie intégrante, proclame la reconnaissance à tout être humain sans distinction de race, de religion, de sexe ou de croyance, des droits inaliénables et sacrés ; il affirme l'attachement du peuple camerounais aux libertés fondamentales inscrites dans la Déclaration universelle des droits de l'homme, la Charte des Nations Unies, la Charte africaine des droits de l'homme et des peuples et toutes les conventions internationales y relatives.

Fort de ce qui précède, le Cameroun à ratifié la quasi-totalité des instruments juridiques internationaux relatifs aux droits de l'homme. Le 9 novembre 1990, il a été créé un Comité National des droits de l'homme et des libertés chargé d'assurer les droits du peuple camerounais, son éducation aux droits de l'homme et de coordonner l'action des ONG dans ce secteur ainsi que de protéger les minorités et les populations autochtenes. A ce titre, il reçoit toute dénonciation des cas de violations de ces droits et libertés et procède à cet effet à des enquêtes et investigations. Il étadie toute question qui se rapporte à la défense et à la promotion des droits de l'homme, et vulgarise les instruments relatifs à ces droits.

Il convient de souligner également que bien que la Loi n° 65/LF/24 du 12 novembre 1965 et la Loi n° 97/009 du 10 janvier 1997 modifiant certaines dispositions du Code Pénal prévoient la peine capitale (tout comme le nouveau code de procédure pénale du 12 juillet 2005), celle-ci, dans les faits, n°a pas été mise à exécution depuis 1984. Toute cette action sur le plan national procède de la conviction que seule la pratique quotidienne du respect des droits et des libertés fondamentales de l'homme peut assurer la paix.

- Sur le plan sous-régional, le Cameroun est co-initiateur du projet du Centre Sousrégional pour les Droits de l'Homme et la Démocratie en Afrique Centrale. Ce Centre qui a été créé en 2001 et qui a son siège à Yaoundé, a pour objectif de contribuer au renforcement des capacités pour la promotion et la protection des droits de l'homme et d'appuyer la création d'institutions nationales et leur renforcement ; il œuvre également en faiveur du développement d'une culture des droits de l'homme et de la démocratie en Afrique Centrale afin de prévenir les conflits et de promouvoir une paix et un développement durables.

 Sur le plan africain, le Cameroun est partie à la Charte africaine des droits de l'homme et des peuples qu'il a du reste, intégrée dans sa Constitution.

- Au niveau international, comme souligné plus haut, le Cameroun est partie à la quasi-totalité des instruments juridiques internationaux relatifs aux droits de l'homme. C'est le lieu de rappeler que selon l'article 45 de la Constitution, "les traités et accords internationaux régulièrement approuvés ou ratifiés ont, dès leur publication, une autorité supérieure à celle des lois".

Par ailleurs, le Cameroun, membre de la Commission des droits de l'homme depuis le 1<sup>er</sup> janvier 2006 a apporté sa contribution tant à Genève qu'à New York à la création du Conseil des droits de l'homme : il s'engage à poursuivre avec détermination son action pour l'exercice effectif et la pleine jouissance par tous de tous les droits fondamentaux et des droits civiques, politiques, économiques, sociaux et culturels et à se conformer en tous points à la Résolution A/RES/60/251 du 15 mars 2006 sur le Conseil des droits de l'homme.

Le Secrétariat Général des Nations Unies voudrait bien trouver en annexe, l'aidemémoire (en Français et en Anglais) relatif à la candidature camerounaise.

La Mission Permanente du Cameroun serait reconnaissante au Secrétariat Général de bien vouloir en assurer la diffusion.

La Mission Permanente de la République du Cameroun auprès des Nations Unies remercie le Secrétariat Général des Nations Unies pour sa collaboration habituelle et saisit cette occasion pour lui renouveler les assurances de sa très haute considération.

Secrétariat Général de L'Organisation des Nations Unies <u>New York</u>



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# AIDE-MEMOIRE

# LE CAMEROUN ET LES DROITS DE L'HOMME

« Dans le monde d'aujourd'hui qui a tendance à reléguer l'homme au second plan, notre Organisation se doit de relever le défi des valeurs éthiques... Grâce à elles, la centralité de l'Homme dans nos politiques et actions sera consacrée » (Discours du Président Paul BIYA au Sommet du Millénaire)

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1 Le Cameroun qui est membre de la Commission des Droits de l'Homme depuis le 1<sup>er</sup> janvier 2006 a décidé de présenter sa candidature au nouveau Conseil des droits de l'homme lors des élections qui auront lieu le 9 mai 2006, au cours de la 60<sup>e</sup> session de l'Assemblée Générale.

2 Pays épris de paix et défenseur des droits de l'homme, le Cameroun a apporté son soutien actif à la création par les Nations Unies du nouveau Conseil des droits de l'homme, tant lors des négociations à Genève qu'à New York.

3 C'est donc tout naturellement qu'il a joint sa voix à celle des autres Etats membres le 15 mars 2006 à l'Assemblée Générale pour la création de ce Conseil.

4 Cette position participe des idéaux humanitaires auxquels le Cameroun a très tôt adhéré et pour la réalisation desquels il œuvre sur les plans national, sous-régional et mondial.

#### 1 - POLITIQUE NATIONALE DE PROMOTION DES DROITS HUMAINS

5 L'engagement du Cameroun en faveur des droits de l'homme qui trouve son fondement dans la Constitution se traduit par la mise en place d'un cadre juridique et institutionnel et l'adoption des mesures qui en assurent la protection.

# A/ Au plan constitutionnel

6 Depuis son accession à la Magistrature suprême, le Président Paul Biya n'a eu de cesse de multiplier des mesures politiques pour l'avènement d'une culture des droits de l'homme au Cameroun. Ces actions trouvent leur couronnement dans la Constitution du 18 janvier 1996. Avec l'adoption de celleci, on assiste en effet, au sacre des droits de l'homme.

6.1°) Tout d'abord cette Constitution leur confère un caractère constitutionnel grâce à l'incorporation explicite de la Déclaration Universelle des droits de l'homme dans le bloc de constitutionnalité.

Le préambule pose que :

« Le peuple camerounais, Proclame que l'être humain, sans distinction de race, de religion, de sexe, de

croyance, possède des droits inaliénables et sacrés ; Affirme son attachement aux libertés fondamentales inscrites dans la déclaration universelle des droits de l'homme, la Charte des Nations Unies, la Charte

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africaine des droits de l'homme et des peuples et toutes conventions internationales y relatives et dûment ratifiées, notamment aux principes suivants :

- l'égalité des hommes en droits et devoirs,
- l'obligation pour l'Etat d'assurer à tous les citoyens les conditions nécessaires à leur développement,
- la protection des minorités et des droits des populations autochtones,
- la liberté et la sécurité des individus dans le respect des droits d'autrui et de l'intérêt supérieur de l'Etat,
- la liberté de mouvement,
- l'inviolabilité du domicile, et le secret de la correspondance,
- la non rétroactivité de la loi
- le droit de se faire rendre justice,
- la présomption d'innocence
- le respect des droits de la défense,
- le droit à la vie et à l'intégrité physique,
- le respect des origines, des opinions ou croyance en matière religieuse, philosophique ou politique,
- la laïcité de l'Etat, sa neutralité et son indépendance vis é vis de toutes les religions,
- la liberté du culte et le libre exercice de sa pratique,
- la liberté de communication, la liberté d'expression, la liberté de presse,
- de réunion, d'association, la liberté syndicale et el droit de grève, - la protection et l'encouragement de la famille,
- la protection de la femme, des jeunes, des personnes âgées et des personnes handicapées.
- le droit à l'instruction de l'enfant,
- l'enseignement primaire obligatoire,
- le droit de propriété,
- le droit à un environnement sain,
- la défense et la promotion de l'environnement,
- le droit et le devoir de travailler,
- la participation aux charges publiques en proportion des capacités,
- la défense de la patrie ».

6.2°) Cette Constitution facilite aussi l'intégration des conventions internationales dans l'ordre juridique interne et leur accorde une place qui en assure la transcendance. Aux termes de l'article 45 en effet, «les Traités ou Accords internationaux régulièrement approuvés ou ratifiés ont dès leur publication une autorité supérieure à celle des lois... ».

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**6.3°)** Enfin grâce à la réforme constitutionnelle du 18 janvier 1996, la justice camerounaise a vu accroître sa capacité à garantir les droits de l'homme et les libertés fondamentales et à sanctionner les violations.

# B/ Aux plans pénal et institutionnel

# B.1. Code camerounais et droits humains

7 Le code pénal camerounais prévoit et réprime les infractions portant atteinte aux droits fondamentaux de l'homme.

8 Tout acté discriminatoire à l'égard des personnes ou de groupes ou d'organisations est réprimé.

9 Le code pénal, le code d'instruction criminel, le code civil et le code de procédure civil assurent l'égalité d'accès devant les tribunaux à tous les citoyens.

#### B. 2. Divers comités mis en place

10 Depuis Juin 1998, il a été institué *un Comité technique* chargé de suivre des instruments internationaux relatifs aux droits de l'homme et libertés. Ce Comité facilite et prépare la signature desdits instruments et veille à la mise en œuvre des obligations conventionnelles qui en découlent. Il s'agit d'une structure de premier plan en vue de l'acceptation et du respect du droit international. Cette instance vient compléter et appuyer le Comité National des Droits de l'Homme et des Libertés.

11 Un Comité national des droits de l'homme et des libertés a été créé par décret n°90/1459 du 8 novembre 1990; il a pour mission la défense et la promotion des droits de l'homme et des libertés. A ce titre, il reçoit toute dénonciation des cas de violations de ces droits et libertés et procède à cet effet à des enquêtes et investigations. Il étudie toute question qui se rapporte à la défense et à la promotion des droits de l'homme, et vulgarise les instruments relatifs à ces droits.

# C/ Mesures de renforcement du respect des droits humains

12 D'autres importantes mesures sont prévues qui viennent, au quotidien, renforcer le respect et la protection des droits de l'homme.

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- Le multipartisme institué au Cameroun depuis 1990 est intégral. Plus d'une centaine de partis politiques fonctionnent en toute liberté sur l'ensemble du territoire national.
- La liberté de presse est garantie et le pays compte à ce jour plus d'une centaine de titres de journaux privés et plusieurs stations privées de radio et télévision.
- L'Etat camerounais assure la protection des minorités et préserve les droits des populations autochtones.
- Les efforts déployés par le Cameroun en faveur de la promotion et de la protection des droits de l'homme sont appréciés par les nombreux étrangers vivant au Cameroun et dont le nombre ne cesse d'augmenter.
- Le Cameroun en vertu de cette politique d'accueil et de respect des droits de l'homme constitue pour les nombreuses populations qui fuient les pays africains en conflits une terre de prédilection.
- Par ailleurs, le Cameroun participe activement aux travaux du Comité des droits de l'homme à qui il adresse régulièrement les rapports requis.
   Son engagement en faveur du respect des droits de l'homme lui a valu à maintes reprises les félicitations du Comité contre la torture, et les recommandations dudit comité constituent des principes directeurs pour les autorités camerounaises en la matière.
- Bien que prévue dans le Code pénal de 1965 (tout comme dans le nouveau Code de procédure pénale du 12 juillet 2005), la peine capitale, dans les faits, n'a pas été mise à exécution depuis 1984.
- Depuis plusieurs années, le Cameroun développe une campagne de vulgarisation des instruments internationaux relatifs aux droits de l'homme, à travers des séminaires, conférences et ateliers, la formation des policiers, gendarmes et militaires.
- Dans les différents niveaux d'enseignement, sont prévus des cours sur les droits de l'homme et sur le droit humanitaire. L'objectif visé est l'acquisition par tous les camerounais de cette véritable culture du droit et surtout des droits de l'homme dont les fondements ont été patientment et obstinément mis en place par le Président Paul Biya.

#### II - POLITIQUE DE COOPERATION EN MATIERE DES DROITS HUMAINS

13 Fort de cette expérience, le Cameroun conjugue ses efforts avec les États de la région et ceux membres des Nations Unies pour hâter l'avènement d'une société respectueuse de la personne humaine et de ses droits. 14 Sur le plan sous-régional, le Cameroun est co-initiateur du Centre Sousrégional pour les Droits de l'Homme et la Démocratie en Afrique Centrale. Ce Centre qui a été créé en 2001 et qui a son siège à Yaoundé, a pour objectif de contribuer au renforcement des capacités pour la promotion et la protection des droits de l'homme et d'appuyer la création d'institutions nationales et leur rénforcement ; il œuvre également en faveur du développement d'une culture des droits de l'homme et de la démocratie en Afrique Centrale afin de prévenir les conflits et de promouvoir une paix et un développement durables.

15 Sur le plan continental africain, le Cameroun est partie à la Charte Africaine des droits de l'homme et des peuples qu'il a du reste intégrée dans sa Constitution. Par ailleurs, il est partie à la Cour Africaine des droits de l'homme.

16 Au niveau mondial, le Cameroun, qui est attaché à la primauté du droit dans les relations entre les Etats et entre les peuples, est fier d'avoir ratifié la guasi-totalité des instruments internationaux de protection des droits de l'homme.

#### 16.1°) Il est partie aux conventions cl-après :

- La Déclaration Universelle des droits de l'homme
- La Convention internationale sur l'élimination de toutes les formes de discrimination raciale, adoptée à New York le 7 mars 1966;
- Le Pacte international relatif aux droits économiques, sociaux et culturels adopté, à New York le 16 décembre 1966 ;
- Le Pacte international relatif aux droits civils et politiques, adopté à New York le 16 décembre 1966;
- Le Protocole facultatif se rapportant au pacte international relatif aux droits civils et politiques, adopté à New York le 16 décembre 1966;
- La Convention sur l'imprescriptibilité des crimes de guerre et des crimes contre l'humanité, adoptée à New York le 26 novembre 1968;
- La Convention internationale sur l'élimination et la répression du crime d'apartheid, adoptée à New York le 30 novembre 1973 ;
- La Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, adoptée à New York le 18 décembre 1979;
- Le Protocole facultatif à la convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, adoptée à New York le 6 octobre 1999;
- La Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adoptée à New York le 10 décembre 1984

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- La Convention relative aux droits de l'enfant adoptée à New York le 20 novembre 1989 :
- Le Protocole de 1953 amendant la convention relative à l'esclavage de 1926 :
- La Convention relative au statut des réfugiés ;
- La Convention supplémentaire relative à l'abolition de l'esclavage, de la
- traite des esclaves et des institutions et pratiques analogues à l'esclavage ; - La Convention pour la répression de la traite des êtres humains, de
- l'exploitation et de la prostitution d'autrui ;
- L'amendement au paragraphe 2 de l'article 43 de la convention relative aux droits de l'enfant adopté à New York le 12 décembre 1995.

16.2°) En attendant leur ratification, le Cameroun a déjà signé les instruments ci-après :

- La Convention internationale contre l'apartheid dans les sports, adoptée à New York le 10 décembre 1985 ;
- le Protocole facultatif à la convention relative aux droits de l'enfant, concernant l'implication d'enfants dans les conflits annés, adopté à New York le 25 mai 2000 ;
- le Protocole facultatif à la convention relative aux droits de l'enfant concernant la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants, adopté à New York le 25 mai 2000.

16.3°) Le Cameroun est fier d'avoir très tôt plaidé et œuvré en faveur de la création de la Cour Pénale internationale dont il est l'un des premiers signataires.

#### III - LES ENGAGEMENTS FUTURS DU CAMEROUN A L'EGARD DES DROITS HUMAINS

17 En décidant de présenter sa candidature aux élections au Conseil des Droits de l'Homnie, le Cameroun entend confirmer sa détermination à poursuivre résolument sa politique d'épanouissement de la personne humaine ainsi que de la promotion et du respect de ses droits et libertés. Pour le Cameroun, en effet, la centralité de l'homme doit être consacrée dans nos politiques et actions. C'est cette conviction qu'avec force le Chef de l'Etat du Cameroun S.E. Paul BIYA, a défendue et a voulu faire partager à la Communauté internationale lors du Sommet du millénaire.

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18 Le 07 septembre 2000 en effet, le Chef de l'Etat déclarait à la Tribune des Nations Unies ce qui suit :

« Dans le monde d'aujourd'hul qui a tendance à reléguer l'Homme au second plan, notre Organisation, pour remplir sa mission de façon efficiente, se doit de rélever le défi des valeurs éthique. Si la mondialisation ne s'accompagne pas d'un nouvel ordre moral, si elle manque de ce supplément d'âme que constitue la solidarité entre les Nations et les peuples, elle risque de mettre en danger la paix si chère à notre temps.

A la vérité, notre monde a besoin d'éthique. En tant qu'ensemble de valeurs morales, elle constitue une attente essentielle de l'ensemble de la communauté humaine. Grâce à l'éthique, la centralité de l'Homme dans nos politiques et actions sera consacrée : En effet, comment parler des Droits de l'Homme sans Droit au développement ? Quelle démocratie et quelle bonne gouvernance sans une éthique de solidarité internationale n'est-elle pas nécessaire dans le traitement de la dette des pays pauvres.

Nous en appelons à la création au sein du Secrétariat Général de l'ONU d'un comité ou d'un observatoire international d'éthique chargé précisément, de promouvoir entre les nations et à l'intérieur de celles-ci, les valeurs humaines fondamentales universelles. »

19 Le Cameroun, qui respectera les obligations prévues dans la résolution constitutive du Conseil des Droits de l'Homme, s'engage à:

- œuvrer pour l'effectivité des droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement;
- coopérer à cet effet avec les organisations régionales, les organismes nationaux des droits de l'homme et la société civile;
- œuvrer par le dialogue et la coopération constructive à l'échelle internationale en vue de la jouissance et du rayonnement effectifs des droits de l'homme
- poursuivre ses efforts en vue de rendre effectif le respect intégral des obligations découlant des instruments juridiques internationaux en matière des droits de l'homme;
- coopérer pleinement avec les Etats membres de l'ONU et particulièrement ceux membres du Conseil des droits de l'homme pour que ce nouvel organe remplisse avec efficacité les tâches qui découlent
de ses missions, et cela dans le respect des principes d'universalité, d'impartialité, d'objectivité et de non sélection.

 Œuvrer inlassablement pour la crédibilité du Conseil des droits de l'homme./

The Permanent Mission of Canada to the United Nations



La Mission permanente du Canada auprès des Nations Unies

#### Note 0168

The Permanent Mission of Canada to the United Nations presents its compliments to the President of the 60<sup>th</sup> Session of the General Assembly and, following its note no. 1050, dated 4 April 2006, announcing Canada's candidacy to the Human Rights Council, and in accordance with resolution A/RES/60/251, has the honour to enclose herewith a document detailing Canada's contribution to the promotion and protection of human rights and its voluntary pledges and commitments made thereto.

The Government of Canada is committed to making a positive contribution to ensuring that the Human Rights Council becomes an effective body for the promotion and protection of human rights.

The Permanent Mission of Canada to the United Nations avails itself of this opportunity to renew to the President of the 60<sup>th</sup> Session of the United Nations General Assembly the assurances of its highest consideration.

NEW YORK, 10 April, 2006



### Human Rights Council Canada's Commitments and Pledges

The promotion and protection of human rights is an integral part of Canada's foreign and domestic policy. Canada is a strong supporter of the UN human rights system.

#### Canada's engagement with the Human Rights Council

The Human Rights Council will be at the heart the UN human rights architecture and thus, Canada pledges:

- to work with all stakeholders to put in place an efficient and effective Human Rights Council that builds on the strengths and lessons learned of the Commission on Human Rights;
- to give effect to the Council's mandate to promote and protect human rights, including by responding appropriately to human rights violations, by contributing to its work on norm development, and by encouraging cooperation and dialogue;
- to engage with all UN member states to find new and creative ways to ensure that the Council's work has a *direct, concrete, and positive impact* on promotion and protection of the rights of people around the world;
- to participate constructively in the mandate review process and in developing modalities of a universal periodic review mechanism, and to submit itself to periodic review;
- to ensure that the Council benefits from the involvement and contributions of civil society, including non-governmental organizations and national institutions;
- to work with all stakeholders for a system of special procedures, which is essential for the Council's emphasis on the implementation of human rights obligations;
- to re-extend its open invitation to special procedures to visit Canada.

In 1999, Canada was one of the first countries to give an open invitation to special procedures of the Commission on Human Rights. Since that time, the Special Rapporteurs on Toxic Waste, the Rights of Migrants, Indigenous Peoples, Racism, the Right to Health and, most recently in 2005, the Working Group on Arbitrary Detention have made official visits.

Canada was re-elected to the Commission on Human Rights for the 2005-2007 term. During its tenures, Canada played a leadership role in the establishment and implementation of *norms and standards* on key human rights issues including the rights of indigenous peoples, violence against women, freedom of expression, mass exoduses, the work of treaty bodies, as well as rights of the child.

Canada has also taken a leading role in the fight against *impunity*, including by becoming a party to the Rome Statute of the International Criminal Court and strongly supporting various international and hybrid criminal tribunals. Its commitment to international humanitarian law and the protection of refugees is unwavering.

# Support for the Office of the High Commissioner for Human Rights and international cooperation

Canada's strong support to the important work of the OHCHR was re-affirmed recently when we increased our unearmarked funding for the Office, making Canada one of the top donors. We have also supported efforts to double the funds available to the Office from the UN regular budget. Canada pledges:

to provide the OHCHR with additional unearmarked contributions for its work;

to pursue international cooperation programs on human rights, gender equality, child protection, democracy, good governance, and the rule of law - this, in response to the interest expressed by many states for dialogue and cooperation.

#### Canada and UN human rights instruments

Canada has ratified key UN human rights instruments: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of all Forms of Racial Discrimination (CERD); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT); Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW); and Convention on the Rights of the Child (CRC), and its Optional Protocol on Children in Armed Conflict. As well, Canada recently ratified the Second Optional Protocol of the ICCPR aimed at the abolition of the death penalty and the Optional Protocol to the CRC on the Sexual Exploitation and Sale of Children. Canada has agreed to the jurisdiction of the *individual complaint mechanisms* established by the First Optional Protocol to the ICCPR, CAT and the Optional Protocol to the CEDAW.

Canada is one of only six States that is fully up-to-date in its reporting to the treaty bodies and, by May 2006, Canada will have presented its reports before all six of these Committees in the past four years. Consultation mechanisms are in place to ensure that federal, provincial and territorial governments are aware of, and give serious consideration to, the recommendations of treaty bodies, and further, that such recommendations are available to Canadians.

As regards UN human rights instruments, Canada pledges:

- to submit its reports to the treaty bodies in a timely fashion and to participate in meaningful dialogue with the treaty body members;
- to work with the treaty bodies and key stakeholders on the renewal and reform of the UN treaty body system;
- to consider signing or ratifying other human rights instruments, such as the Optional Protocol to the CAT.

#### Human Rights in Canada

At the domestic level, human rights and gender equality are promoted and protected through the Canadian Charter of Rights and Freedoms. At the federal, provincial, and territorial levels, there are also human rights codes and human rights bodies, such as the Canadian Human Rights Commission, which play a key role in furthering equality rights in Canada.

Canada has a vigorous civil society, which plays an important role in the promotion of human rights, both at the national and international level. The government and civil society engage on a range of issues relating to human rights, in a spirit of cooperation and dialogue.

All governments in Canada carry out public education programs in the area of human rights, including through formal education curricula.

Based on this solid institutional and legislative background, Canada commits to actively pursue the implementation of human rights domestically, including with respect to racism, indigenous people and the protection of children. The Permanent Mission of Canada to the United Nations



La Alission permanente du Canada auprès des Nations Anies

# Note nº 0168

La Mission permanente du Canada auprès des Nations Unies présente ses compliments au Président de la soixantième session de l'Assemblée générale des Nations Unies et suite à sa note no. 1050 du 4 avril 2006, annonçant la candidature du Canada aux élections au Conseil des droits de l'homme, et conformément à la résolution A/RES/60/251, a l'honneur de transmettre un document explicitant le concours que le Canada a apporté à la cause de la promotion et de la défense des droits humains et les contributions volontaires qu'il a annoncées et les engagements qu'il a pris en la matière.

Le gouvernement du Canada s'engage à contribuer d'une manière positive pour s'assurer que le Conseil des droits de l'homme devienne un organe efficace pour la promotion et la défense des droits humains.

La Mission permanente du Canada auprès des Nations Unies saisit cette occasion pour renouveler au Président de la soixantième session de l'Assemblée générale des Nations Unies les assurances de sa très haute considération.

NEW YORK, le 10 avril 2006



## Conseil des droits de l'homme Engagements du Canada

La promotion et la protection des droits de la personne fait partie intégrante des grands objectifs poursuivis par le Canada tant au plan national qu'en matière de politique étrangère. Le Canada est un ardent promoteur du système des droits de la personne des Nations Unies.

#### Action du Canada en faveur du Conseil des droits de l'homme

Le Conseil des droits de l'homme est une plèce maîtresse de l'appareil onusien relatif aux droits de la personne et, à ce titre, le Canada s'engage à :

- mettre en place, avec le concours de tous les intéressés, un Conseil des droits de l'homme efficient et efficace, qui met à profit les points forts et les enseignements de la Commission des droits de l'homme;
- réaliser le mandat du Conseil en matière de promotion et de protection des droits de la personne, et ce, par une action adéquate face aux violations des droits de la personne, par l'élaboration de normes, ainsi que par un accent sur la coopération et le dialogue;
- collaborer avec tous les États membres des Nations Unies à la recherche de méthodes nouvelles et inédites pour que les travaux du Conseil aient une incidence directe, concrète et constructive sur la promotion et la protection des droits de la personne dans le monde;
- participer de façon constructive à l'examen des mandats ainsi qu'à l'élaboration des modalités d'un mécanisme d'examen périodique à caractère universel, et à se soumettre à un tel examen;
- faire en sorte que le Conseil bénéficie de la participation et de la contribution de la société civile, y compris des organisations non gouvernementales et des institutions nationales;
- œuvrer, avec le concours de tous les intéressés, à la mise en place d'un régime de procédures spéciales essentiel à la réalisation d'un objectif prioritaire du Conseil, à savoir la mise en œuvre des obligations en matière de droits de la personne;
- renouveler son invitation permanente à toutes les procédures spéciales de visiter le Canada.

En 1999, le Canada a été l'un des premiers pays à émettre une invitation permanente aux procédures spéciales de la Commission des droits de l'homme. Depuis, il a reçu la visite des rapporteurs spéciaux chargés des déchets toxiques, des droits des migrants, des droits des peuples autochtones, de la lutte contre le racisme et du droit à des soins de santé, y compris, en 2005, celle du Groupe de travail sur les détentions arbitraires.

Le Canada a été réélu à la Commission des droits de l'homme pour la période de 2005 à 2007. Pendant tous ses mandats, le Canada a joué un rôle d'impulsion dans la création et la mise en œuvre de *normes et standards* face à des enjeux cruciaux liés aux droits de la personne, y compris les droits des peuples autochtones, la violence contre les femmes, la liberté d'expression, les exodes massifs, les organes créés par les traités internationaux, ainsi que les droits de l'enfant.

Le Canada joue un rôle de premier plan dans la lutte contre *l'impunité*. C'est ainsi qu'il est devenu partie au Statut de Rome de la Cour pénale internationale et qu'il appuie fermement différents tribunaux pénaux internationaux et hybrides. Par ailleurs, le Canada demeure résolument attaché au respect du droit humanitaire international et à la protection des réfugiés.

#### Soutien au Haut Commissaire des Nations Unies aux droits de l'homme et à la coopération internationale

Le Canada appuie le travail important réalisé par le Haut Commissariat des Nations Unies aux droits de l'homme. Le Canada a récemment augmenté sa contribution financière au profit du Haut Commissariat, de sorte qu'il est désormais l'un de ses principaux donateurs. Notre pays a en outre appuyé les efforts visant à doubler les crédits consentis au Haut Commissariat, au titre du budget ordinaire des Nations Unies. Le Canada s'engage à:

fournir des contributions financières additionnelles, sans condition, au Haut Commissariat;

appuyer des programmes de coopération internationale en matière de droits de la personne, égalité entre les sexes, protection des enfants, démocratie, bonne gouvernance et primauté du droit - le tout à suite de l'intérêt manifesté par de nombreux États envers le dialogue et la coopération.

#### Le Canada et les instruments de droits des la personne des Nations Unies

Le Canada a ratifié d'importants instruments des Nations Unies dans le domaine des droits de la personne: le Pacte international relatif aux droits civils et politiques (PIDCP); le Pacte international relatif aux droits économiques, sociaux et culturels (PIRDESC); la Convention internationale sur l'élimination de toutes les formes de discrimination raciale (CEDR); la Convention contre la torture et autres peines ou traitements, cruels, inhumains ou dégradants (CCT); la Convention contre la torture et autres peines de discrimination à l'égard des femmes (CEDEF); la Convention relative aux droits de l'enfant (CDE), et son Protocole facultatif concernant les enfants dans les conflits armés. De même, le Canada a récemment ratifié le Deuxième Protocole facultatif au PIDCP qui vise à abolir la peine de mort, ainsi que le Protocole facultatif à la Convention relative aux droits de l'enfant, contre l'exploitation sexuelle et la vente des enfants. Le Canada souscrit en outre aux compétences dévolues au titre des *mécanismes de plaintes* institués en vertu du Premier Protocole facultatif a nexé au PIDCP et à la Convention relative aux droits de l'enfant, et aux termes du Protocole facultatif à la CEDEF.

Le Canada fait en outre partie des six pays dont les rapports à l'intention des organes institués en vertu des traités sont à jour. En mai 2006, le Canada aura ainsi complété, sur une période de quatre ans, la présentation de tous les rapports prévus aux six comités institués en vertu des traités. Des mécanismes de consultation ont été mis sur pied pour s'assurer que les gouvernements fédéral, provinciaux et territoriaux prennent connaissance des recommandations formulées par les organes institués en vertu des traités et les examinent attentivement. Les recommandations des comités sont également accessibles au public.

S'agissant des instruments des droits de la personne des Nations Unies, le Canada s'engage à:

- présenter, dans les délais appropriés, ses rapports aux organes créés en vertu d'instruments internationaux, et à participer à un dialogue constructif avec les membres de ces mêmes instances;
- oeuvrer, avec le concours de ces instances et des principaux intéressés, au renouvellement et à la réforme du système onusien au regard des organes conventionnets;
- envisager la signature ou la ratification ultérieure d'autres instruments des droits de la personne, tel que le Protocole facultatif à la Convention contre la torture.

#### Droits de la personne au Canada

Au plan national, le Canada s'attache à promouvoir et à protéger les droits de la personne et l'égalité entre les sexes par l'application de la *Charte canadienne des droits et libertés.* Les pouvoirs publics fédéraux, provinciaux et territoriaux ont aussi mis en place des normes de droits de la personne et des instances chargées de les faire appliquer, telles que la Commission canadienne des droits de la personnes qui joue un rôle crucial dans la promotion du droit à l'égalité au Canada.

Le Canada compte en outre une société civile très dynamique qui joue un rôle important dans la promotion des droits de la personne, tant au niveau national qu'international. Le Canada collabore avec la société civile en ce qui concerne de nombreux aspects des droits de la personne, et ce, dans un esprit de coopération et de dialogue.

Tous les gouvernements au Canada mettent en oeuvre des programmes d'éducation publique reliés aux droits de la personne, y inclus dans le système d'éducation formel.

S'appuyant sur cette solide base législative et institutionnelle, le Canada s'engage à travailler activement à la mise en oeuvre des droits de la personne au niveau national, incluant en matière de racisme, peuples autochtones, et protection de l'enfant. Ghana

United Nations



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Sixty-second session Agenda item 113 (d) Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council

#### Note verbale dated 14 March 2008 from the Permanent Mission of Ghana to the United Nations addressed to the President of the General Assembly

The Permanent Mission of the Republic of Ghana to the United Nations presents its compliments to the President of the General Assembly at its sixtysecond session and has the honour to inform him that the Government of Ghana has decided to present its candidature to the Human Rights Council for the term 2008-2011 in the elections to be held in May 2008, during the sixty-second session of the General Assembly, in New York.

In accordance with General Assembly resolution 60/251, an aide-memoire on Ghana's achievements, voluntary pledges and commitments towards the universal promotion and protection of human rights is attached (see annex).

08-28894 (E) 020408

Annex to the note verbale dated 14 March 2008 from the Permanent Mission of Ghana to the United Nations addressed to the President of the General Assembly

Aide-memoire

Voluntary pledges and commitments of Ghana in accordance with resolution 60/251

Ghana's Membership of the Human Rights Council

- Ghana has since the formation of the Human Rights Council participated actively in its debates and participated in other activities of the Council, thereby contributed effectively to the Councils collaborative effort to build the consensus necessary for the promotion and protection of human rights around the world.
- Ghana has pursued a consistent policy of non-politicisation of the work of the Council, and worked to ensure objectivity in the Councils debates and decisions. Consequently, she has consistently urged the Council to focus on the enhancement of international cooperation for the promotion and protection of human rights.
- As a member of the Council, she has articulated and pursued the interests of victims of human rights abuses around the world. Through active participation, she has also followed a policy of cooperation and engagement even during periods of disagreement to ensure decisions in favour of human rights promotion.

## International commitments

2

- Ghana was among the first members of the African Union to subscribe to the African Peer Review Mechanism to be peer reviewed. In the same vein, it welcomed the system of Universal Periodic Review (UPR) of the Human Rights Council and stands ready to be reviewed in May 2008 during the second session of the first cycle of the UPR.
- Ghana fully cooperates with human rights treaty bodies by duly submitting its periodic reports and endeavour to implement their concluding observations and recommendations.
- In cooperation with the United Nations Special Procedures, the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Yakin Erturk, undertook a mission to Ghana from 7 to 14 July, 2007 and enjoyed the invaluable support and cooperation of the competent Ghanaian authorities and civil society organizations.

08-28894

Ghana is party to key international human rights instruments including:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of the Child
- Rome Statute of the International Criminal Court

## Ghana has also signed the following:

- Convention for the Protection of All Persons from Enforced Disappearance
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of Persons with Disabilities
- Optional Protocol to the Convention on the Rights of Persons with Disabilities
- Optional Protocol to the Convention on the Rights of the Child on children in armed conflict
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- In March 2007, Ghana was one of the first countries to sign the Convention on the Rights of Persons with Disabilities which is a clear demonstration of its solidarity and belief in a life with dignity for all and that all human beings are equal. The competent Ghanaian authorities are working to facilitate domestic procedures for ratifying the Convention as early as possible. Moreover, domestic laws related to the disabled have been revised to fall in line with the newly adopted Convention.
- Ghana is also party to the Convention relating to the Status of Refugees and the 1967 Protocol, the Geneva Conventions of 12 August 1949, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) and the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the

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Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

- Ghana is a party to the African Charter on Human and Peoples' Rights and to the Protocol Establishing the African Court on Human and Peoples' Rights (ACHPR).
- Measures are being taken at the national level to ratify or accede to all international human rights instruments to which Ghana is not yet party.
- Ghana's commitment to the tenets of democracy, human rights and the rule of law
  and good governance have carved for her the image of a highly democratic African
  country. It has fulfilled its obligations in respect of international human rights and
  humanitarian law and has over the last decade worked closely with the UNHCR to
  offer a home away from home for refugees in the West Africa sub-region.

#### Human rights at home

 The Government of Ghana is fully committed to the promotion and protection of human rights. In consonance with that commitment, Ghana has made an open-ended provision in the 1992 Constitution of the Republic of Ghana in Article 33(5) of Chapter 5 on fundamental human rights and freedom as follows:

> The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.

- The Constitution of Ghana also guarantees respect for the economic, cultural and social rights of her citizens. In this spirit, Ghana has implemented extensive legislation provisions that protect human rights in an open and democratic political culture.
- A conducive environment that does not tolerate violations of the rights of all Ghanaians has been created. The Commission for Human Rights and Administrative Justice, a constitutional body monitoring human rights and dealing with violations and educating the public on human rights, is in place.
- As an eloquent manifestation of our commitment to and the protection of children and gender balance, the Ministry of Women and Children's Affairs with Cabinet status continues to pursue various programmes and projects for women's empowerment and gender equality and child rights.

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- Ghana is committed and responding to the calls to implement the Declarations and Plans of Action towards Africa Fit for Children and the World Fit for Children. An Early Childhood Development/HIV/AIDS as well as Orphans and Vulnerable Children (OVC) policies have been developed and community based organizations (CBOs) working on HIV/AIDS have been trained and equipped with skills to respond to the special needs of children infected and affected by HIV and AIDS.
- Annual national campaigns on integrated child health comprising immunization, distribution of free insecticide treated bed nets and Vitamin 'A' supplementation have been institutionalized and no child in Ghana has died from measles disease in the last four years and we are on course to be certified as a polio free country.
- Having conducted a research into violence against children, Ghana has started the
  process towards developing a National Plan of Action on violence against children.
  On this note, Ghana fully supports the General Assembly's decision in December
  2007 appointment of a Special Representative on violence against children, for a
  period of three years, to act as a high-profile and independent global advocate for the
  prevention and elimination of all forms of violence against children.
- Ghana enacted legislation against Human Trafficking in 2005 and has developed a comprehensive National Plan of Action to implement the legislation. A cross sectoral Human Trafficking Management Board and a Human Trafficking Fund have been established to facilitate execution. In addition, Ghana has entered into multilateral and bilateral cooperation agreements with neighbouring countries to effectively combat trafficking in persons especially children across our borders.
- The Government of Ghana recognizes the threat that violence against women poses to women's empowerment, and thus, for many years, has exhibited strong political will and enacted laws that are needed to truly end such atrocities and ensure equal rights for women in all aspects of life.
- Several pieces of legislation are in place to prohibit negative cultural practices which
  impede the development of women such as ritual servitude and FGM, harmful
  widowhood rites, early marriages, violence and sexual exploitation and abuse,
  discriminatory food allocations and taboos and practices relating to health and well
  being of women and children.
- Domestic Violence and Victim Support Units (DOVVSU) of the Ghana Police Service have been established throughout the country to promote protection of women and children from domestic violence, abuse and neglect. The Units activities have brought into scrutiny some pertinent issues in both the domestic setting and the workplace.

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- To provide the requisite legal framework for the activities of DOVVSU, the Parliament of Ghana in February, 2007, passed the Domestic Violence Act 2007, (Act 732) marking yet another milestone in our commitment to human rights and specifically the rights of women. The Government now is developing a comprehensive National Domestic Violence Action Plan to ensure its implementation.
- Further legislative reforms to ensure equal rights between women and men culminated in the enactment of a law on the property rights of spouses that give both spouses equal access to property acquired during marriage in situations of divorce or separation.
- Ghana fosters an environment that allows space for and encourages the work of human rights defenders and journalists for human rights.
- Ghana has over the last decade worked closely with UNHCR to serve as an oasis of peace, security and stability for refugees in the West Africa sub-region and fulfilled its obligations in respect of international human rights and humanitarian law.
- Ghana has also provided training on the prevention of violence and response to sexual and gender based violence to the refugee community, police personnel and members of the neighbourhood watch teams under the auspices of the UNHCR programme.
- Additionally, police and military institutions and Women Constituencies are engaging to develop Ghana's Plan of Action on implementation of Security Council Resolution 1325 on Women Peace and Security.

#### Ghana and human rights in the future

The Government of the Republic of Ghana reiterates its longstanding resolve that human rights should be approached in a dialogue-based and constructive manner and voluntarily commits itself to the following:

- to continue to participate actively in the work of the Human Rights Council;
- to continue to strengthen policies for the advancement of women to eliminate laws that continue to discriminate against women;
- reiterates its commitments to the survival, development, protection, of children in issues that affect their well being and above all in their best interest;
- to maintain a standing invitation to all United Nations Special Procedures;

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- A/62/771
- to continue to cooperate fully with UN human rights treaty bodies and promptly submit its periodic reports to treaty bodies;
- to remain committed to strengthening the Council to enable it achieve its aims and objectives.

NEW YORK, 10 MARCH, 2008

08-28894

A/61/718

India

United Nations



Distr.: General 29 January 2007

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Sixty-first session Agenda item 105 (e) Elections to fill vacancies in subsidiary organs and other elections: election of fourteen members of the Human Rights Council

## Note verbale dated 1 December 2006 from the Permanent Mission of India to the United Nations addressed to the Secretariat

The Permanent Mission of India to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to state that on the expiry of its one-year term, India has decided to present its candidature for re-election to the Human Rights Council for a three-year term, at elections to be held in New York in 2007. This information was conveyed to the Secretariat on 6 October 2006. In this connection, the Permanent Mission of India further has the honour to enclose a copy of the voluntary pledges and commitments by India for the information of the Secretariat (see annex).



#### Annex to the note verbale dated 1 December 2006 from the Permanent Mission of India to the United Nations addressed to the Secretariat

#### Voluntary pledges and commitments by India

India is seeking re-election to the Human Rights Council at the elections to be held at the UN General Assembly in New York in May 2007.

India has a long tradition of promoting and protecting human rights. It was privileged to be in the forefront of the struggle against apartheid since even before India's independence. India's commitment to promoting and protecting human rights flows from the realization that in a truly pluralistic society, the growth and well being of citizens can only be guaranteed through a culture of protection and promotion of human rights.

The Indian Constitution enshrines India's commitment to human rights by guaranteeing to its citizens fundamental political and civil rights. Special provisions for the progressive realization and enforcement of economic, social and cultural rights have also been provided for constitutionally. India has taken an important initiative for the empowerment of women by reserving one-third of all seats for women in urban and local self-government, thus bringing over one million women at the grassroots level into political decision making. With the launch of the National Rural Employment Guarantee programme on February 1, 2006, the right to work has been operationalized in India. The Protection of Women from Domestic Violence Act enacted by the Indian Parliament in 2005 provides immediate and emergency relief to women in situations of domestic violence. Reflective of India's commitment to eliminate child labour, a ban on employment of children under-14 years as domestic help or at eateries came into force in India with effect from 10 October 2006.

The independent and impartial Indian judiciary has delivered far-reaching pronouncements on the protection and promotion of human rights. Far-reaching measures taken by the Supreme Court of India include Public Interest Litigation, by which the Supreme Court can be moved by any individual or group of persons highlighting the question of public importance for invoking this jurisdiction. The Supreme Court of India has recognized the justiciability of some economic and social rights as an extension of the Right to Life. The National Human Rights Commission, a powerful and independent body, monitors human rights developments in India and shares its experience and expertise with its counterparts in other countries. The free and independent media in India plays a crucial role in promoting respect for and monitoring of human rights. Civil society in India is among the most vibrant anywhere the world.

India is a committed supporter of the UN human rights system and the promotion and protection of human rights is ingrained in its domestic and foreign policy. It has been active in deliberations on human rights in international fora and in the development of widely accepted international norms. India is a large, democratic, multi-ethnic, multi-religious, multi-lingual, and multi-cultural society, whose continued presence on the Human Rights Council would bring a perspective of straddling all divides of pluralism, moderation and balance from a country that has consistently demonstrated in practice its commitment to human rights and

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fundamental freedoms. Against this backdrop, India voluntary makes the following pledges and commitments:

- India will abide by its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of all its citizens.
- India will maintain the independence, autonomy as well as genuine powers of investigation of national human rights bodies, including the National Human Rights Commission, National Commission for Women, National Commission for Minorities, National Commission for Scheduled Castes and Scheduled Tribes, and National Commission for Backward Classes, as mandated by Indian constitution and laws.
- India will foster a culture of transparency, openness and accountability in the functioning of the Government, as enacted in the Right to Information Act.
- India will continue to encourage efforts by civil society seeking to protect and promote human rights.
- India will continue to work towards the progressive realization of the right to work.
- India will expand the implementation of its Rural Employment Guarantee Programme, which provides for 100 days of assured employment annually to every rural household in the country.
- India will continue to promote the social, economic and political empowerment of women in India by affirmative actions, gender mainstreaming in national planning, gender budgeting and formation of women self-help groups. India will work towards elimination of discrimination and violence against women through legislative measures as well as effective implementation of existing policies.
- A National Commission for the Protection of Child's Rights would be set up for the speedy trial of offences against children or of violation of child's rights.
- India will work to make the Human Rights Council a strong, effective and efficient body capable of promoting and protecting human rights and fundamental freedoms for all.
- India will engage constructively in the evolution of modalities and mandates of the Human Rights Council, and in the reform of the UN human rights machinery.
- India will participate actively in the work of the Human Rights Council in norm-setting in the field of human rights.
- India will participate constructively in developing modalities for universal periodic review by the Human Rights Council and in reviewing and strengthening the system of Special Procedures and other expert mechanisms of the Council.
- India will continue to support the Office of the UN High Commissioner of Human Rights, including through regular voluntary contributions.

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- India will strive for the full realisation of civil, political, economic, social and cultural rights, including the right to development.
- India will continue to support UN bodies such as UNICEF, UNIFEM, UNFPA, UN Democracy Fund, etc., that have a role in contributing to the protection and promotion of human rights.
- India will work with UN Member States and relevant UN bodies for reform of the UN treaty-body system.
- India will work for the world-wide promotion and protection of human rights, based on the principles of cooperation and genuine dialogue.
- India will cooperate with States, upon request, in their implementation of human rights obligations through capacity building by way of technical cooperation, human rights dialogues and exchange of experts.
- India will continue to actively support domestic and international processes that seek to advance empowerment of women and women's rights and gender equality.
- India will continue to actively support domestic and international processes that advance the rights of the child.
- India will work for the implementation of the Beijing Declaration and Platform of Action, the Copenhagen Declaration and Plan of Action, and the outcomes of other major UN international conferences.
- India will continue to support efforts directed at the adoption of a Declaration on the Rights of Indigenous Peoples.
- India will support the adoption of the Convention on the Rights of Persons with Disabilities during the 61st Session of the UN General Assembly.

MISSION OF MALAYSIA

國 001/004

Malaysia



#### HA 24/06

The Permanent Mission of Malaysia to the United Nations presents its compliments to the secretariat of the United Nations and, with reference to its note no. HA 20/06 dated 12 April 2006 informing the Secretariat of the candidature of Malaysia to the Human Rights Council, has the honour to enclose herewith an Aide Memoire detailing Malaysia's voluntary pledges and commitments in accordance with Resolution A/RES/60/251 of 15 March 2006.

The Permanent Mission of Malaysia highly appreciates the kind assistance of the Secretariat in posting the enclosed Aide Memoire on Malaysia's candidature to the Human Rights Council on the General Assembly website.

The Permanent Mission of Malaysia to the United Nations avails itself of this opportunity to renew to the Secretariat of the United Nations the assurances of its highest consideration.

New York, 28 April 2006



Secretariat of the United Nations New York

Attn: Department of General Assembly and Conference Management Room: S-2925A Fax: (212) 963 2155

## MALAYSIA'S CANDIDATURE TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL

#### AIDE-MEMOIRE

Malaysia, a member of the Commission on Human Rights prior to it being dissolved, is seeking election to the new Human Rights Council (HRC) at the elections to be held by the United Nations General Assembly on 9 May 2006.

2. Malaysia, since attaining independence in 1957, upholds that the promotion and protection of all human rights as an indispensable aspect in the process of nation building. Consistent with the Universal Declaration of Human Rights (UDHR), successive Malaysian Governments have made the guarantee of the individual's fundamental rights and liberties, as enshrined in the Constitution, the cornerstone of its policies and programmes; while noting that all individuals have duties and responsibilities to the community to ensure the continued enjoyment of peace, stability and prosperity.

3. The respect that the Malaysian Government has for each individual's rights is clearly manifested in the fact that free, fair and peaceful General Elections have been held consistently without fail since independence for the people to elect their representatives to the various branches of Government within the nation's democratic system. Universal suffrage has been a principal feature in each election.

4. Another manifestation of the importance that the Government attaches to the enjoyment of all human rights and fundamental freedoms is the promotion of a free media, including in cyberspace, as well as the encouragement of vibrant and active civil societies.

5. As a nation with a multi-ethnic and multi-religious society, Malaysia is confident that its experience in managing a plural society would bring an important dimension to the work of the new Human Rights Council. Malaysia recognizes that the stability of any multiethnic society depends on a spirit of mutual tolerance and respect for diversity which is based on an inclusive and responsive political and legal system, which balances civil and political rights such as the freedom of expression and opinion and the wider needs of such a society.

6. Laws, regulations and institutions related to human rights in Malaysia continue to evolve in step with the increasing aspirations of a democratic society. One of the measures was the establishment of the National Commission on Human Rights (SUHAKAM) in 1999. SUHAKAM monitors human rights developments in Malaysia and is entrusted *inter-alia* with powers to investigate complaints regarding alleged human rights violations. Over and above its investigative function, SUHAKAM is also active in promoting a culture of human rights, particularly through education not only in schools but also within government institutions, such as the police force. SUHAKAM is also involved in activities at the regional and international levels.

7. The increasing threat posed by terrorism worldwide has highlighted the importance of balancing security concerns with the preservation of individual liberties. Malaysla believes that it has achieved this balance, drawing on its experience in combating the armed insurgency by forces aiming to dismantle the democratic government in the early years of its independence. The events of September 11 have also given rise to the misperception that democracy and human rights are incompatible with Islam and countries in which Islam is the dominant religion. Małaysia's record in this regard disproves this misperception. These achievements would not have been possible if individual rights and freedoms are not respected.

8. Beyond civil and political rights, the Malaysian Government has also sought to fulfill its responsibilities with regard to economic, social and cultural rights. As an example of this commitment, the Malaysian Government has consistently allocated the largest proportion of the annual budget to education. Having achieved many of the goals set out in terms of primary education, the Government is now endeavoring to expand the tertiary education system, not only as a means of strengthening the right to education but also in order to better equip Malaysians to meet the challenges posed by globalisation.

9. Malaysia is fully aware that good governance, integrity in the public sector and transparency in the Government's activities are essential if the goals of full enjoyment of human rights and fundamental freedoms are to be achieved. Towards this end, the National Integrity Plan (PIN) was launched on 23 April 2004, which is aimed at, among others, to:

- 9.1 Continuously and effectively combat and reduce the incidence of corruption, malpractices and abuse of power;
- 9.2 Enhance efficiency in the delivery system of the civil service and to reduce unnecessary inefficiencies;
- 9.3 Improve corporate governance and business ethics; and
- 9.4 Strengthen the family institution.

10. To ensure that these aims are achieved, the Government formed the Malaysian Integrity Institute, whose functions include to:

- 10.1 Undertake research and conduct training and education pertaining to community and institutional integrity;
- 10.2 Develop a database on ethics and integrity;
- 10.3 Formulate policies to enhance ethics and integrity as well as advising the Government on programmes to enhance integrity; and
- 10.4 Continuously monitor and ensure the implementation of the Plan.

11. Malaysia will continue to take proactive and innovative measures to further promote and protect human rights and fundamental freedoms in the country.

12. At the international level, Malaysia has been a member of the Commission on Human Rights (CHR) for four terms, and was a member of that body for the term 2005-2007 when the Commission on Human Rights was dissolved, to be replaced by the Human Rights Council. As an active and committed member of the Commission, Malaysia has contributed constructively in its deliberations. Malaysia is determined to continue to do so in the work and activities of the newly established Human Rights Council if elected to the membership.

13. Malaysia believes that the new Human Rights Council has an important role to play in the universal promotion and protection of human rights and in ensuring the effective enjoyment by all of all human rights. In order to achieve these lofty goals, the Human Rights Council needs to be made strong, fair, effective and efficient, and free of acrimony and undue politicization.

- Towards this end, Malaysia pledges to:
  - 14.1 Engage constructively in evolving modalities of work of the Human Rights Council with the aim of making it a strong, fair, effective, efficient and credible vehicle for the promotion and protection of human rights worldwide;
  - 14.2 Support the work of the Office of the High Commissioner for Human Rights;
  - 14.3 Continue to participate actively in the norm-setting work of the Human Rights Council;
  - 14.4 Work towards fostering a spirit of cooperation in the Human Rights Council, free from acrimony and politicization, based on the principles of mutual respect and dialogue;
  - 14.5 Promote greater coherence between the work of the Human Rights Council with other United Nations agencies and actors in achieving internationally agreed targets and goals, such as the Millennium Development Goals and those contained in the Vienna Declaration and Plan of Action, the Beljing Declaration and Platform of Action, the Copenhagen Declaration and Plan of Action as well as the Cairo Declaration and Programme of Action;
  - 14.6 Actively support international action to advance the rights of vulnerable groups such as women, children and the disabled.

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PERMANENT MISSION OF THE REPUBLIC OF MAURITUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MALIRICE AUPRES. DES NATIONS UNIES

Note No. 7394/06 (Ref: NY/UN/957/E)

6 April 2006

The Permanent Mission of the Republic of Mauritius to the United Nations presents its compliments to the President of the  $60^{th}$  Session of the United Nations General Assembly and has the bonour to inform that the Government of the Republic of Mauritius has decided to present its candidature for membership to the United Nations Human Rights Council at the elections to be held during the General Assembly of the United Nations session in New York on 9 May 2006.

Mauritius attaches the utmost importance to the promotion and protection of human rights and supports all international and regional efforts aimed at the advancement of human rights and fundamental freedoms, democracy and good governance and rule of law.

Mauritius is a party to all major international human rights instruments and always upholds the primary role of the United Nations in the promotion and protection of human rights. The establishment of the Human Rights Council strengthens further the human rights system within the United Nations and in seeking membership in the newly created Council, Mauritius underscores its firm commitment to contribute effectively in the work and activities of the Council.

The Government of the Republic of Mauritius is also deeply committed to uphold the highest standards in the promotion and protection of human rights and will shortly submit its voluntary pledges and commitments in accordance with resolution A/RES 60/251.

The Permanent Mission of the Republic of Mauritius to the United Nations avails itself of this opportunity to renew to the President of the 60<sup>th</sup> Session of the United Nations General Assembly the assurances of its highest consideration of the



New York

President of the 60<sup>th</sup> Session of the United Nations General Assembly

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PERMANENT MISSION OF THE REPUBLIC OF MAURITUS TO THE UNITED NATIONS MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

Note No. 7526 /06 (Ref: NY/UN/957/E)

21 April 2006

The Permanent Mission of the Republic of Mauritius to the United Nations presents its compliments to the President of the 60<sup>th</sup> Session of the United Nations General Assembly and with reference to the Note No. 7394/06 of 6 April 2006, regarding the candidature of the Republic of Mauritius to the United Nations Human Rights Council, has the honour to forward herewith its voluntary pledges and commitments in accordance with Resolution A/RES/60/251.

The Permanent Mission of the Republic of Mauritius to the United Nations avails itself of this opportunity to renew to the President of the 60<sup>th</sup> Session of the kinited Nations General Assembly the assurances of its highest consideration.



The President of the 60th Session of the United Nations General Assembly New York

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# Voluntary Pledges and Commitments in accordance with Resolution A/RES/60/251

MAURITIUS

The Republic of Mauritius has always been committed to the promotion and protection of Human Rights at national, regional and international levels. The Government of Mauritius strongly believes that citizens should be at the core of all forms of human rights including the right to economic, cultural and social development and that the people should enjoy all their political and civil rights indiscriminately and irrespective of their status. Mauritius is party to most of the core international human rights instruments and has enacted comprehensive legislation for the protection and promotion of human rights and fundamental freedoms and ensures their implementation.

#### National Level

- The respect and protection of human rights is enshrined in the Constitution of Mauritius and since its independence, the Republic of Mauritius remains deeply committed to building a civil society based on democracy, good governance, rule of law and protection of human rights and fundamental freedoms.
- The National Human Rights Commission was set up in April 2001 under the Protection of Human Rights Act 1998 in line with the United Nations guidelines governing such institutions.
- The Commission ensures that there is compliance with the fundamental rights and freedoms of the individual enshrined in Chapter II of the Constitution. It also has the power to enquire into any written complaints from any person alleging that any of his human rights has been, is being or is likely to be violated by the act of omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body. The Commission can equally enquire into any other written complaint from any person against an act or omission of the police force in relation to him. Visits can be effected to any police station, prison or other place of detention under the control of the State to study the living conditions of the detainees and the treatment afforded to them. In 2003, a Sex Discrimination Division was

created within the National Human Rights Commission under the Sex Discrimination Act 2002 to deal with cases of sex discrimination and sexual harassment. The Sex Discrimination Division also has the power to deal with complaints within the private sector as well.

- The Office of the Ombudsperson for children was established under the Ombudsperson for Children Act in 2003. The Ombudsperson for Children has the duty of promoting compliance with the Convention on the Rights of the Child (CRC) and investigating possible violations of the rights of a child.
- In December 2005, the Child Protection Act was amended in order to provide for the offences of 'child trafficking', 'abandonment of child' and 'abducting child'.
- Regarding the issue of child abuse and child prostitution, Mauritius signed in 2001 the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Mauritius also acceded to the United Nations "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime" in September2003.
- Mauritius is currently considering the following legislative measures to promote Human Rights :
  - (i) The Equal Opportunities Bill;
  - (ii) A Draft Bill for the Family Court;
  - (iii) An amendment to the law on custodial sentences for civil debtors;
  - (iv) A Disability Discrimination Bill which will include inclusive education for disabled children;
  - (iv) An HIV/AIDS Bill;
  - (v) Reform of the law dealing with administration of juvenile justice;
  - (vi) A Children's Act which will review all legislations pertaining to children.

With the help of UNDP, Mauritius has developed a national human rights strategy on 10 December 2005. There is provision for setting up a HUMAN RIGHTS CENTRE with regional sub-centre all over the island and one in Rodrigues. The Centre will be a Resource Centre to sensitize people about Human Rights and International Instruments.

## Regional Level

- Mauritius has signed the African Charter of Human and People's Rights and ratified the said Charter on 19 June 1992. Mauritius has equally signed the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa at the Abuja AU Meeting in January 2005. Mauritius has, however, made reservations on Articles 6(b), 6(c), 10(2)(d), 11 and 14(2) (c). Mauritius has further ratified the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and People's Rights on the establishment of the African Court on Human and People's Rights.
- Mauritius has hosted a series of conferences/meetings on human rights issues. In relation to the African Court of Justice, Mauritius hosted both the meeting of Experts/Judges and Permanent Representatives from 4 – 6 June 2003 and the First Ministerial Meeting of Ministers of Justice of the African Union from 7 – 8 June 2003 at the Grand Bay International Conference Centre. A seminar was organized on « Sensibilisation sur la ratification et la mise en oeuvre du statut de Rome de la Cour Pénale internationale » from 27 – 29 May 2002 jointly by the Attorncy-General's Office and the « Agence Intergouvernementale de la Francophonie ».

From 10 – 12 September 2003, the Office of the United Nations High Commissioner for Human Rights in collaboration with the Attorney General's Office, organised a Regional Workshop on Human Rights and Good Governance.

Mauritius has also hosted the "Rencontre Conjointe du Bureau du Comité de Suivi de la Conférence des Structures Gouvernementales Chargées des droits de l'Homme dans l'Espace Francophonie et des Réseaux Institutionnels de la Francophonie » from 19 – 21 July 2005. Mauritius is one among the first African countries to have volunteered to be reviewed under the NEPAD Peer Review Mechanism.

# International Level

- Mauritius pursues a policy of active cooperation with international organizations and their respective bodies and institutions in the field of human rights and fundamental freedoms. It is deeply committed to uphold the highest standards in the promotion and protection of human rights.
- Mauritius upholds the primary role of the United Nations in the promotion and protection of human rights.
- Mauritius was a member of the Commission on Human Rights in 1971-1973, 1993-1995 and 1999-2001.
- Mauritius is party to six of the seven core international human rights treaties as follows -
  - The International Convention on the Elimination of All Forms of Racial Discrimination;
  - (ii) International Covenant on Civil and Political Rights;
  - (iii) International Covenant on Economic, Social and Cultural Rights;
  - (iv) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
  - (v) Convention on the Rights of the Child (CRC).
  - (vi) Convention on the Elimination of All Forms of Discrimination against Women.
- Mauritius has ratified the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Mauritius is also party to the Rome Statute of the International Criminal Court.
- Despite its limited resources, Mauritius has consistently fulfilled its reporting obligations by submitted regularly periodic reports to the various human rights treaties. Mauritius has also submitted reports to the various Committees monitoring the international treaties.

# If elected to the Human Rights Council,

the Government of Mauritius undertakes to -

- continue to uphold the primacy of democracy, good governance and development as key tenets in the promotion of human rights of its citizens and strengthen national institutions that guarantee best these rights;
- continue to play a constructive role in the advancement of human rights and fundamental freedoms and further contribute to the enhancement of United Nations human rights activities;
- participate actively in the work of Council for the promotion and protection of all human rights in a spirit of impartiality, objectivity and non-selectivity, constructive dialogue and cooperation;
- be reviewed under the universal periodic review mechanism; and
- support international efforts to enhance inter cultural dialogue and understanding among civilizations, cultures and religions with a view to facilitate the universal respect for all human rights given that Mauritius is a multi-racial and multi-ethnic country.



# HUMAN RIGHTS COUNCIL: NIGERIA'S VOLUNTARY PLEDGES AND COMMITMENTS

### The Government of the Federal Republic of Nigeria

Strongly welcomes the establishment of the Human Rights Council;

Commits itself to the purposes and objectives of the Human Rights Council;

Undertakes to cooperate fully with the Human Rights Council and through active participation in the work of the Council, and in cooperation with members of the Council, non-members as well as regional organizations and civil society, to make the Council a credible, strong, fair and effective United Nations human rights body;

Expresses its readiness to submit itself to the universal periodic review mechanism;

Pledges to cooperate with the treaty monitoring bodies of the Council, including through submission of timely periodic reports and the implementation of concluding observations and recommendations;

Pledges to contribute actively to the development of human rights culture and the integration of human rights into United Nations activities as well as regional organizations such as the African Union and the Economic Community of West African States;

Reaffirms its determination and commitment to continue to promote and protect human rights at home by strengthening and actively supporting the work of the National Human Rights Commission, in order to make it more effective in carrying out its mandate;

Expresses its determination to continue to play, at regional and international levels, a responsible and leading role in the promotion and protection of peace, stability and democracy;

Commits itself to the promotion and protection of all human rights, particularly civil and political rights, and economic, social and cultural rights including the right to development;

Reaffirms its commitment to work for the strengthening of the Office of the United Nations High Commissioner for Human Rights;

Reaffirms its commitment to the maintenance of an open door policy on human rights issues and to this end, reaffirms its preparedness to welcome human rights inspectors, special rapporteurs and representatives to visit Nigeria in order to carry out their respective mandates without hindrance; Reaffirms its commitment to cooperate fully with other special procedures of the Council and to work towards upholding the rule of Iaw and to encourage constructive dialogue and international cooperation in the field of human rights;

Reaffirms its commitment to uphold the principles of non-discrimination and the protection and promotion of the human rights of all its citizens and to this end, to accelerate the process of full domestication of relevant international human rights conventions including the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child;

Reaffirms its commitment to the following international human rights instruments which it has ratified without any reservations:

- ✓ International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- ✓ Convention on the Rights of the Child;
- ✓ ILO Convention 182 on Elimination of Child Labour;
- ✓ Convention on the Elimination of all forms of Discrimination Against Women;
- ✓ African Charter on Human and Peoples' Rights;
- ✓ Convention Against Transnational Organized Crimes ;
- Protocol Against the Smuggling of Migrants by Land, Sea and Air;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children;
- ✓ Protocol Against Manufacture, Sale and Trafficking in Firearms and their parts;
- ✓ Convention Against Corruption;
- Rome Statute of the International Criminal Court;

Undertakes to accede, as soon as practicable, to the International Convention on the Protection of all Migrant Workers and Members of their Family and to examine the possibility, in the near future, of signing, ratifying or acceding to human rights instruments to which Nigeria is not yet a signatory, including the Convention on the Prevention and Punishment of the Crime of Genocide;

Undertakes to continue to uphold the provisions of the Conventions, Protocols or Covenants to which it has ratified and pledges to regularly report on their implementation to the treaty monitoring bodies of the Human Rights Council.

## United Nations

A/62/808

General Assembly

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Pakistan

Sixty-second session Agenda item 113 (d) Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council

#### Letter dated 15 April 2008 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the General Assembly

It gives me great pleasure to inform you that Pakistan has announced its candidature for the Human Rights Council for the term 2008-2011 in the elections to be held in May 2008.

The candidature of Pakistan for the Human Rights Council is a reflection of its deep commitment to the cause of human rights and fundamental freedoms.

In the context of Pakistan's candidature to the Human Rights Council, and in accordance with the provisions of General Assembly resolution 60/251, I am enclosing a record of the voluntary pledges and commitments made by Pakistan for the promotion and protection of human rights (see annex).

(Signed) Munir Akram



### Annex to the letter dated 15 April 2008 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the General Assembly

#### Contribution, commitments and voluntary pledges of Pakistan to promote human rights

#### In accordance with General Assembly resolution 60/251

Pakistan has decided to present its candidature for re-election to the Human Rights Council (HRC) for one of the four (4) Asian seats for the term 2008-2001, elections for which will be held in May 2008.

In accordance with the provisions of General Assembly Resolution 60/251, following is a brief of Pakistan's contribution, voluntary pledges and commitments to promote human rights:

#### Contribution to the promotion of human rights

- Pakistan played a leading role in the establishment of the Human Rights Council as a body that should promote dialogue, cooperation, capacity building and technical assistance for the promotion of human rights with due regard to historic, cultural and religious values of Member States and their specific socio-economic conditions.
- As a founding member of the Human Rights Council, Pakistan has worked hard, in collaboration with other members, to provide a firm and consensual basis in creating the new architecture of the Human Rights Council. Through effective coalition building, Pakistan played a constructive role in the first year of the Council and helped craft critical agreements on Modalities of the Universal Periodic Review (UPR); Review of the System of Special Procedures and Review of Confidential Complaint Procedure (1503);
- The Pakistan delegation actively contributes to the work of the Council through its knowledge of human rights issues, norms, standards, as well as of the intricate history of the agreements that now form the foundation of the work within the Council.
- Pakistan continues to serve as the chair of the OIC Working Group on Human Rights in Geneva (Pakistan is also the current chair of the Islamic Conference of Foreign Ministers). In this respect, Pakistan has endeavoured to overcome the divergences and misunderstandings that have appeared in approach of the Islamic World and the West. To this

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end, Pakistan has been a part of all major initiatives to promote intercultural dialogue and harmony among diverse societies and cultures and has run resolutions in the General Assembly and the Human Rights Council to promote inter-religious and inter cultural cooperation for peace.

## Progress on past pledges and future commitments

- Pakistan has fulfilled most of its pledges made at the time of its election to the Human Rights Council in 2006. The Federal Cabinet has decided to (a) ratify the International Covenant on Economic, Social and Cultural Rights, (b) sign the International Covenant on Civil and Political Rights and (c) sign the Convention against Torture. The ratification and signature formalities are being finalized.
- The establishment of Pakistan's National Human Rights Commission is on the anvil.
- Pakistan is already a party to the International Convention on the Elimination of Racial Discrimination (CERD), International Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), and to the core ILO Conventions 100, 138, 182 and 111. Pakistan is also a signatory to Convention against Transnational Organized Crime and to the two optional Protocols to the Convention on the Rights of the Child.
- Special attention is being given to the social and economic emancipation of women and protection of the rights of other vulnerable groups including children and minorities. Human rights mass awareness campaigns through media & education programme have been launched to promote respect and observance of human rights in the society.
- Pakistan has remained a consistent supporter of the Human Rights Council and firmly believes in its importance as a major body of the United Nations Human Rights system. Pakistan was amongst the first countries to support the Universal Periodic Review mechanism as an innovation for the Council to examine human rights globally and effectively and to eliminate concerns about selectivity. Pakistan will be among the first countries to be reviewed in the UPR process.

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- Pakistan has repeatedly underscored the critical role played by the human rights special procedure system.
- Pakistan also supports the active role of civil society and the Non-Governmental Organizations in the work of the Council.
- Pakistan is committed to ensuring that the Council is empowered to make full use of its potential.
- If re-elected to the Human Rights Council for the term 2008-2011, Pakistan would continue to make its active contribution to the normative and operational work of the Human Rights Council and would support activities aimed at promoting the highest standards of human rights in other fora.
# United Nations



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Sixty-second session Agenda item 113 (d) Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council

# Letter dated 15 April 2008 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the General Assembly

It gives me great pleasure to inform you that Pakistan has announced its candidature for the Human Rights Council for the term 2008-2011 in the elections to be held in May 2008.

The candidature of Pakistan for the Human Rights Council is a reflection of its deep commitment to the cause of human rights and fundamental freedoms.

In the context of Pakistan's candidature to the Human Rights Council, and in accordance with the provisions of General Assembly resolution 60/251, I am enclosing a record of the voluntary pledges and commitments made by Pakistan for the promotion and protection of human rights (see annex).

(Signed) Munir Akram



# Annex to the letter dated 15 April 2008 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the General Assembly

# Contribution, commitments and voluntary pledges of Pakistan to promote human rights

#### In accordance with General Assembly resolution 60/251

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In accordance with the provisions of General Assembly Resolution 60/251, following is a brief of Pakistan's contribution, voluntary pledges and commitments to promote human rights:

# Contribution to the promotion of human rights

- Pakistan played a leading role in the establishment of the Human Rights Council as a body that should promote dialogue, cooperation, capacity building and technical assistance for the promotion of human rights with due regard to historic, cultural and religious values of Member States and their specific socio-economic conditions.
- As a founding member of the Human Rights Council, Pakistan has worked hard, in collaboration with other members, to provide a firm and consensual basis in creating the new architecture of the Human Rights Council. Through effective coalition building, Pakistan played a constructive role in the first year of the Council and helped craft critical agreements on Modalities of the Universal Periodic Review (UPR); Review of the System of Special Procedures and Review of Confidential Complaint Procedure (1503);
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- If re-elected to the Human Rights Council for the term 2008-2011, Pakistan would continue to make its active contribution to the normative and operational work of the Human Rights Council and would support activities aimed at promoting the highest standards of human rights in other fora.

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# United Nations



A/61/889

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Sixty-first session Agenda item 105 (e) Elections to fill vacancies in subsidiary organs and other elections: election of fourteen members of the Human Rights Council

### Note verbale dated 26 April 2007 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly

The Permanent Mission of the Republic of South Africa presents its compliments to the Permanent Missions of the States Members of the United Nations and with reference to the forthcoming elections of the members of the United Nations Human Rights Council scheduled for 17 May 2007 in New York, has the honour to inform the latter that the Government of the Republic of South Africa has decided to present its candidature for re-election to the Human Rights Council for the period 2007-2010.

South Africa is currently serving as a member of the Human Rights Council and has played a leading role in all the ongoing institution-building processes of the Council, which mark a critical transition from the Commission on Human Rights to the new Council.

The Permanent Mission of the Republic of South Africa to the United Nations herewith encloses an aide-memoire outlining South Africa's voluntary commitments with respect to the promotion and protection of human rights in accordance with General Assembly resolution 60/251 of 15 March 2006 (see annex).

The Government of the Republic of South Africa would appreciate the valuable support of the States Members of the United Nations for its candidature to the Human Rights Council.



# Annex to the note verbale dated 26 April 2007 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly

# Aide-memoire in support of South Africa's candidature to the Human Rights Council

Following the first democratic elections in 1994, South Africa returned to the international community in 1995 to assume its rightful place among the community of nations. The experience in this relatively short period has been richly rewarding and South Africa has played a key role in the shaping of the international human rights agenda including the constant development of international human rights and humanitarian law. A central consideration in South Africa's foreign policy is the commitment to the promotion, protection and fulfilment of human rights and fundamental freedoms and the advancement of democracy.

#### South Africa's Constitution and Bill of Rights

The first democratic elections of 1994 placed South Africa firmly on the path of constitutional democracy. The Republic of South Africa Constitution Act 108 of 1996 is the supreme law of the land. In keeping with the international Bill of Human Rights, the South African Constitution entrenches and constitutionally guarantees all the universally recognized human rights and fundamental freedoms.

Whereas the South African democracy is relatively young, the heroic struggle by South Africans for democracy, social justice and human rights and fundamental freedoms is very old and extends over a period of 350 years. During this period South Africans were subjected to successive repressive regimes ranging from conquests, colonialism and the worst form of institutionalized racism and racial discrimination, namely, apartheid.

The 1994 democratic elections in South Africa created a political space for all the rights enumerated in the Constitution to be practically enjoyed. In this regard, the political vision of the democratic government in South Africa is predicted on a fundamental principle which affirms the inextricability between economic, social and cultural rights on the one hand, and the civil and political rights on the other. Also consistent with the fundamentals of the international human rights law, South Africa strongly upholds the notion of i) promotion, ii) protection and iii) fulfilment of all human rights and fundamental freedoms. South Africa's human rights value system is founded on this notion. South Africa has lodged its National Action Plan for the Promotion and Protection of Human Rights at the United Nations on 10 December 1998.

The South African Constitutional Court decisions have produced significant judgements and adjudications which underline the justiciability of the economic, social and cultural rights. The South African case law is currently being used at the international level to give impetus and momentum to the strengthening of the international human rights instruments dealing with economic, social and cultural rights.

Between 1995 and 2006 South Africa has been a member of the Commission on Human Rights on three occasions. In this regard, South Africa chaired the 54th Session of the Commission on Human Rights in 1998, became a Vice-Chair to the 58th Session in 2002 and acted as Co-ordinator on Human Rights issues on behalf of the African Group during the 59th Session in 2003.

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#### Institutions supporting South Africa's democracy

National institutions, established in terms of the constitutional provisions to support constitutional democracy in the country, are actively involved in the monitoring of South Africa's compliance with respect to the implementation of international human rights instruments of which South Africa is a party.

The South African Constitution of 1996 makes provision, through its Chapter 9, for the establishment of the following state institutions to strengthen constitutional democracy in the Republic of South Africa. These institutions are independent and subject only to the Constitution and Parliament:

the Public Protector, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission.

#### UNDERTAKINGS/PLEDGES

It should be underlined that South Africa by its very nature and for historical reasons is among the countries within the United Nations that takes the international human rights agenda very seriously. As a member of the new Human Rights Council, the South African Government undertakes to abide by the following principles:

continue to receive the HRC's Special Procedures and Mechanisms (consistent with its decision of 22 October 2002) wishing to visit the country in keeping with their various mandates. Since the issuance of this open invitation, the following mechanisms have visited South Africa without any restrictions or impediments;

Special Rapporteur on the Situation of Human Rights and Fundamental of Indigenous Peoples, Working Group on Arbitrary Detentions, and

Special Rapporteur on the Sale of Children, Child Pornography and Child Prostitution, and

Special Rapporteur of the African Commission on Human and People's Rights (ACHPR) on the Conditions of Prisons and Detention in Africa,

respect for the integrity and dignity of the Office of the High Commissioner for Human Rights. The South African Government will work to ensure that the High Commissioner for Human Rights (HCHR) and her personnel are above the manipulation and influences of States,

continue contributing financially to the OHCHR. Such contributions shall not be in any way earmarked, as the earmarking of funding to the OHCHR has a limiting effect on the operations of the OHCHR,

continue to support important funds and programmes within the OHCHR aimed at advancing the cause of human rights globally, such as the Voluntary Fund for Victims of Torture, the Voluntary Fund for Victims of Contemporary Forms of Slavery and the recently established United Nations Democracy Fund (UNDEF),

continue with its unwavering position to advocate for a balanced Sustainable Development Programme within the human rights framework as underlined in the Vienna Declaration and Programme of Action (VDPA) as well

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as the United Nations General Assembly resolution 48/141. In this regard South Africa will be one of the chief proponents of a balanced agenda of the HRC which reflects, among others, the primacy of achieving the realisation of the right to development as well as moral human rights issues such as the eradication of poverty and underdevelopment. As it will be recalled, South Africa hosted the World Summit on Sustainable Development in Johannesburg in November 2002 whose Programme of Action is globally regarded as an instructive document for achieving sustainable development,

work to ensure that one of the first preoccupations of the substantive sessions of the HRC will be to update the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), through an amendment protocol, placing the right to development on par with all other rights enumerated in these instruments,

work to promote, within the Human Rights Council, a common understanding that human rights can only be practically enjoyed through an effective partnership with all the relevant stakeholders at all levels,

continue to submit country reports to human rights Treaty Monitoring Bodies. To this end, South Africa will present its country reports to the CERD and the CAT during 2006. South Africa has also presented, during 2005, its country report to the African Commission on Human and Peoples' Rights, and

undertake to submit in the near future a National Action Plan (NAP) exclusively covering the area of racism and racial discrimination as required by the Durban Declaration and Programme of Action (DDPA). As it will be recalled, South Africa hosted the World Conference Against Racism, Racial Discrimination, Xenophobia and Related (WCAR) on 31 August to 08 September 2001.

#### INTERNATIONAL INSTRUMENTS TO WHICH SOUTH AFRICA IS A STATE PARTY

The South African Government signed most of the international human rights instruments on 10 December 1995, and have since ratified/acceded to the following instruments:

the International Covenant on Civil and Political Rights (ICCPR) the Rome Statute of the International Criminal Court (ICC) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) the Convention on the Rights of the Child (CRC) Optional Protocol to the ICCPR Second Optional Protocol to the ICCPR Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution Optional Protocol to the CRC on the Use of Children in Armed Conflict, and Optional Protocol to the CEDAW.

#### REGIONAL INSTRUMENTS TO WHICH SOUTH AFRICA IS A STATE PARTY

South Africa is also a State Party to the following regional (African) human rights instruments:

the African Charter on Human and Peoples' Rights

the African Charter on the Rights and Welfare of the Child, and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

South Africa has volunteered and is next in line to be peer reviewed under the African Peer Review Mechanism on the New Partnership for Africa's Development (NEPAD).

Commitment to international human rights instruments

South Africans are serving or have served on the following Treaty Monitoring Bodies:

the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC), and the Committee on the Elimination of Discrimination Against Women (CEDAW), and the African Commission on Human and Peoples' Rights (ACHPR).

South Africa plays a key role in advocating the agenda for development through intergovernmental structures of the Non-Aligned Movement (NAM) and the Group of 77 and China (G77).

# INSTRUMENTS IN THE PROCESS OF RATIFICATION

The South African Government is in the process of ratifying the following important human rights instruments:

the International Covenant on Economic, Social an Cultural Rights (ICESCR)

the International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT)





# PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

Tel: (212) 986-7040 Fax: (212) 986-1838 E-Mail: SLPMNY@aol.com 630 THIRD AVENUE (20TH FLOOR) NEW YORK, N.Y. 10017

Ref. No POL/G/279

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations presents its compliments to the Secretary-General of the United Nations and with reference to its even numbered note dated 6<sup>th</sup> April 2006 announcing Sri Lanka's candidature to the Human Rights Council, has the honour to present an Aide Memoire in accordance with Resolution A/RES/60/251 detailing pledges and commitments on human rights in support of Sri Lanka's candidature, and if elected, as to how Sri Lanka aims to play a constructive role in the Human Rights Council.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka avails itself of this opportunity to renew to the Secretary-General of the United Nations, the assurances of its highest consideration.

Secretary-General of the United Nations United Nations New York (Room S-2925A)



# Aide Memoire

Sri Lanka has decided to present its candidature to the Human Rights Council at the election to be held at the United Nations General Assembly on 9th May 2006.

 Sri Lanka attaches great importance to the work of the Human Rights Council. If elected, Sri Lanka will make a constructive contribution to the deliberations of the Council for the promotion and protection of human rights.

 Sri Lanka served in the Commission on Human Rights during the periods; 1957-1959, 1985-1990, 1992-2000 and 2003-2005 and played an active and constructive role, including as Vice-Chairman and Coordinator of the Asian Group.

4. Sri Lanka is a Party to all seven major human rights instruments and to the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict. Accordingly, Sri Lanka has maintained a consistent policy of co-operation and open and constructive engagement with all UN Human Rights Treaty Bodies, through the submission of periodic reports.

5. Throughout, the Government of Sri Lanka has also followed a consistent policy of co-operation and open and constructive engagement with the special procedure mechanisms of the Commission on Human Rights as demonstrated by extending regular invitations to such mechanisms to undertake missions in Sri Lanka.

6. The Government of Sri Lanka invited the UN Working Group on Disappearances to undertake missions in 1991, 1992, and 1999 and to the UN Committee Against Torture in 2000. The Special Rapporteur on extra-judicial, summary or arbitrary executions (two visits) and the Special Rapporteur on the freedom of religion or belief have undertaken missions in Sri Lanka on the invitation of the Government. Furthermore, the Special Representative of the UN Secretary-General on Internally Displaced Persons and the Special Representative of the UN Secretary-General for children and armed conflict have also undertaken missions in Sri Lanka on the invitation of the Government:

7. Sri Lanka also plays an active role in the promotion of International Humanitarian Law (IHL). The National Committee on IHL and the Directorate of Human Rights and IHL of the Sri Lanka Army have been lauded by ICRC for their contribution in this field and in particular the recent passage of legislation to give effect to the Geneva Conventions of 1949 and for the protection of the ICRC symbols.

 As a manifestation of the Government's deep commitment for the promotion and protection of human rights, the President of Sri Lanka has now appointed a Cabinet Minister in charge of the subject of human rights.

 In pursuit of its commitment to the further promotion and protection of human rights, Sri Lanka will soon be undertaking the following activities:

> Take appropriate implementational measures in respect of relevant recommendations made by the Human Rights Treaty Bodies after considering the Periodic Reports submitted by Sri Lanka in the past,

through the Permanent Standing Committee on Human Rights Issues, Co-Chaired by the Ministers of Foreign Affairs and Human Rights.

- Build capacity of the Ministry of Human Rights, Human Rights Commission of Sri Lanka and other independent statutory bodies established as a part of the national human rights protection system.
- Introduce a Human Rights Charter in line with the policy statement made by the President of Sri Lanka soon after assuming office.
- Invite the Special Rapporteur on the freedom of expression and opinion and also the Special Rapporteur on the question of torture to undertake missions in Sri Lanka.
- Co-operate with Human Rights Treaty Monitoring Bodies by submitting future Periodic Reports on time.
- Become a Party to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- Make a financial contribution towards the Voluntary Fund for Technical Co-operation in the Field of Human Rights.

 Recognizing that development, peace and security and human rights are interlinked and mutually reinforcing, if elected, Sri Lanka, as a member of the Human Rights Council, will:

- continue to play its traditional role as a consensus-builder and participate actively and constructively in all deliberations of the Council for the promotion and protection of human rights in all parts of the world and for the furtherance of international human rights and humanitarian law. In this regard, Sri Lanka will also keep in mind the mandate given by the resolution A/RES/60/251 to the Human Rights Council and in particular that the Council will be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.
- work with like minded countries to assist the Office of the High Commissioner for Human Rights to formulate proposals for treaty body reform with a view to strengthening and making the UN treaty body system more effective and in line with present day requirements of member States.
- play an advocacy role to broad base the adherence to all seven major human rights instruments with a view to promoting human rights of all sections of society worldwide.

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# United Nations





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Sixty-second session Agenda item 113 (d) Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council

# Letter dated 31 March 2008 from the Permanent Representative of Sri Lanka to the United Nations addressed to the President of the General Assembly

I have the honour to inform you that the Government of Sri Lanka has decided to present its candidature for membership of the Human Rights Council for the term 2008-2011 in the elections to be held during the sixty-second session of the General Assembly.

Sri Lanka's initial two-year term as a member of the Council will expire in May 2008. During its two-year term, Sri Lanka has played an active role in the institution-building process of the Council as Chair of the Asian Group and presently serves as one of its Vice-Chairs. Sri Lanka now seeks an opportunity to serve a full term to continue its role of contributing in a constructive and cooperative manner to the work of the Council.

In this regard, I have the honour to enclose, in accordance with General Assembly resolution 60/251, an aide-memoire outlining voluntary pledges and commitments by Sri Lanka that reiterate Sri Lanka's long-standing commitment to the promotion and protection of all human rights for all (see annex).

It would be appreciated if the present letter and its annex could be circulated as a document of the General Assembly.

> (Signed) Prasad Kariyawasam Ambassador Permanent Representative



# Annex to the letter dated 31 March 2008 from the Permanent Representative of Sri Lanka to the United Nations addressed to the President of the General Assembly

## Voluntary pledges and commitments by Sri Lanka

Sri Lanka is seeking re-election to the Human Rights Council at the elections to be held at the UN General Assembly in New York in May 2008.

Sri Lanka, one of the oldest democracies in the region, has had a long tradition of promoting and protecting human rights. Universal franchise was introduced in Sri Lanka in 1931. The Constitution of Sri Lanka enshrines Sri Lanka's commitment to human rights by guaranteeing to its citizens, fundamental rights, which include freedom of thought, conscience and religion; freedom from torture; right to equality; freedom from arbitrary arrest, detention and punishment, and prohibition of retroactive penal legislation. In addition, every citizen is entitled to freedom of speech, assembly, association, occupation, and movement.

Since Independence, successive Governments have accorded priority to comprehensive health and education systems, resulting in high social indicators that have placed Sri Lanka at the top of the regional human development index. Despite facing the unprecedented challenges of a massive natural disaster, namely the tsunami of December 2004, and the persistent scourge of terrorism, average economic growth is expected to be over 6% in 2007. This has enabled Sri Lanka to disburse the benefits of development to a large cross section of the population. Demonstrating its resilience, Sri Lanka has also substantially recovered from the destruction wrought by the tsunami – an important achievement for a country in the lower middle income range.

Sri Lanka has undertaken international legal obligations by becoming party to the seven core human rights treaties, namely, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

In addition, Sri Lanka is also a State Party to the following Optional Protocols: First Optional Protocol to the International Covenant on Civil and Political Rights; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination

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Against Women; and Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; and on the Sale of Children, Child Prostitution and Child Pornography.

In 2007, Sri Lanka also signed the International Convention on the Rights of Persons with Disabilities, and is currently engaged in enacting necessary legislative and administrative measures to give effect to the provisions of the Convention and ensure the fulfilment of the rights of persons with disabilities. The International Covenant on Civil and Political Rights Act No 56 of 2007 (the ICCPR Act) was passed by the Parliament in October 2007 to give effect to specific articles of the Covenant. The ICCPR Act fills lacunae in the existing domestic legislation. The Government of Sri Lanka has in place enabling legislation to give effect to the Optional Protocol to the Convention of the Rights of the Child, on the Sale of Children, Child Prostitution, and Child Pornography.

Apart from fulfilling reporting obligations to treaty bodies, Sri Lanka has followed a consistent policy of cooperation as well as open and constructive engagement with the special procedures mechanisms of the Commission on Human Rights as well as the Human Rights Council. Such cooperation and engagement is demonstrated by the extension of regular invitations to such mechanisms to undertake visits to Sri Lanka. During 2007, Sri Lanka facilitated visits by the Special Rapporteur on torture and other cruel and, inhuman or degrading treatment of punishment, the High Commissioner for Human Rights, and the Secretary-General's Representative on the human rights of internally displaced persons. In addition, the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator also undertook a visit to Sri Lanka during 2007.

Sri Lanka has opened itself to scrutiny of multiple international mechanisms on the belief that openness and accountability, through international means, can strengthen national efforts at promoting and protecting all human rights. Accordingly, Sri Lanka has committed itself to examination during the 2<sup>nd</sup> session of the first cycle of the Universal Periodic Review mechanism of the Human Rights Council in May 2008 as a further demonstration of our openness to fair and objective scrutiny by the Council.

As a manifestation of its commitment to engage with the international community in ensuring the promotion and protection of human rights of all its citizens, Sri Lanka established an International Independent Group of Eminent Persons (IIGEP), a unique mechanism, to observe the work of the Commission of Inquiry (COI) which was set up at national level to investigate into alleged abductions, disappearances, and extra judicial killings. The mandate of the IIGEP was developed in consultation

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with the United Nations High Commissioner for Human Rights and representatives of the countries nominating members to the IIGEP. The initial mandate of the Commission of Inquiry was extended in November 2007 for a further period of one year.

Sri Lanka also appointed in 2007, a Committee to inquire into allegations of abduction and recruitment of children for use in armed conflict. This Committee has commenced work and is in the process of making inquiries into alleged incidents, and is also taking steps to create an institutional framework for rehabilitation of released, rescued, and surrendered ex-child combatants. Sri Lanka has enacted legislation to make the recruitment of children for armed conflict an offence.

Sri Lanka is a firm supporter of the United Nations human rights system, and has been active in deliberations on human rights in international fora including the negotiations that led to the establishment of the Human Rights Council as well as the adoption of the institution building package of the Council. Sri Lanka made a substantial contribution to building consensus in the Human Rights Council as Chair of the Asian Group in 2007 and was elected as a Vice President of the Human Rights Council for one year in June 2007.

# In pursuit of its commitment to the further promotion and protection of human rights, Sri Lanka voluntarily makes the following pledges and commitments:

- Sri Lanka will continue its efforts to strengthen its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of all its citizens.
- Sri Lanka will continue its active and constructive dialogue and cooperation with the Office of the High Commissioner for Human Rights to strengthen national mechanisms in all aspects.
- Sri Lanka will take necessary steps to enable the reconstitution of the Constitutional Council which will facilitate the strengthening and effective functioning of national human rights mechanisms, including the National Human Rights Commission.
- A Witness and Victim Protection Bill will be introduced in Parliament shortly. Suggestions in this regard from the IIGEP have been received and incorporated. The Commission of Inquiry has established an interim programme by way of rules for the protection of interests of victims.

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- The Ministry of Disaster Management and Human Rights will launch a national human rights awareness campaign to commemorate the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights in 2008.
- The Ministry of Disaster Management and Human Rights will organize a regional seminar for parliamentarians on human rights related themes in 2008.
- Sri Lanka has commenced work on drafting a Human Rights Charter that will strengthen the human rights protection framework in the country and bring Sri Lanka's human rights guarantees in line with international obligations. The process includes engaging in consultations with community-based organisations, NGOs and members of the public. The draft Charter and the process of consultation will foster a national discourse on human rights.
- Sri Lanka will continue to work towards the submission of its periodic reports to treaty bodies including cooperating with OHCHR in drafting a common core document for use by all treaty bodies.
- As a part of its commitment to guarantee civil and political rights as well as economic, social and cultural rights of people, Sri Lanka will continue to align its development strategy within the larger framework of promoting local values and social protection for women, children, elderly and differently able people and vulnerable groups in society and respect to human rights and good governance.
- Sri Lanka, manifesting its commitment to promote people oriented development, will work towards the alleviation of poverty and achieving the Millennium Development Goals by 2015 through continued investment in social infrastructure, education, and health services in line with the Mahinda Chintana policy (vision of H.E. the President of Sri Lanka for social and economic development of the country).
- Through mechanisms such as the Inter-Ministerial Committee on Human Rights, and the Consultative Committee on Humanitarian Assistance, Sri Lanka will continue to promote public awareness regarding action taken to promote and protect human rights.
- Sri Lanka will continue to take steps to safeguard and advance the rights of children through national mechanisms such as the National Child Protection Authority and the Ministry of Child Development and Women's Empowerment.

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Sri Lanka will also continue to actively support international processes that seek to advance the rights of the child.

- Sri Lanka will continue to take steps that seek to advance the empowerment of women and women's rights and gender equality at national level through the Ministry of Child Development and Women's Empowerment as well as other national mechanisms. Sri Lanka will, at the same time support international processes that seek to advance women's rights and gender equality.
- Trafficking of human beings, particularly women and children is emerging as one of the most urgent issues of today and involves the gross violation of human rights of vulnerable segments of society. Keeping in line with Sri Lanka's policy of open and constructive engagement with the international community and its commitment to enforce global standards, Sri Lanka will work closely with its partners to combat this heinous activity.
- Sri Lanka will continue its traditional role of consensus-builder and participate actively in the work of the Human Rights Council to make the Council a strong, effective and efficient body that is capable of promoting and protecting the human rights and fundamental freedoms of all.
- Sri Lanka will continue to participate in the work of the Human Rights Council in norm-setting in the field of human rights.
- Sri Lanka will work with UN member States and relevant UN bodies to assist the Office of the High Commissioner for Human Rights to formulate proposals for treaty body reform with a view to making the UN treaty body system more effective and in line with present day requirements of member States.
- Sri Lanka will work with UN Member States and relevant UN bodies for worldwide promotion and protection of human rights based on principles of cooperation and dialogue.

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# United Nations

General Assembly

A/62/730

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Sixty-second session Agenda item 113 (d) Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council

# Letter dated 29 February 2008 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly

I would like to inform you that the Government of the United Kingdom of Great Britain and Northern Ireland has presented its candidature for re-election to the Human Rights Council for the term 2008-2011 at the elections to be held on 16 May 2008 during the sixty-second session of the General Assembly.

I have attached a copy of the United Kingdom's voluntary pledges and commitments (see annex).

(Signed) John Sawers



Annex to the letter dated 29 February 2008 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly

United Kingdom campaign for re-election as a member of the Human Rights Council

#### Pledges and commitments in human rights

- Commitment to work in partnership to reinforce human rights at the heart of the UN
- The UK will continue to work to strengthen the UN <u>Human Rights Council</u>, promoting universality, transparency, objectivity in all its work.
- ii. The UK will continue to support the unique contribution of the UN General Assembly's Third Committee.
- iii. The UK reaffirms the commitment from the World Summit in 2005 to human rights mainstreaming.
- The UK is committed to the continued effective contribution of <u>regional organisations</u>, <u>national human</u> rights institutions and civil society.
- The UK will continue to work in a spirit of openness, consultation and respect for all, on a foundation of genuine dialogue and cooperation.

#### Commitment to continue support to UN bodies

- The UK will continue to support the Office of the <u>UN High Commissioner for Human Rights</u> (OHCHR). In addition to our regular budget contribution, the UK contributes multi-annual, un-earmarked funding. We are currently providing £2.5 million annually as a voluntary contribution through a 3 year institutional agreement.
- ii. The UK will continue to cooperate fully with the UN's human rights mechanisms, including by maintaining a <u>standing invitation to all Special Procedures</u>. The UK will continue to endeavour to meet its obligations to the UN <u>Treaty Monitoring Bodies</u> fully.
- iii. The UK will continue its voluntary institutional support to UN bodies, including those whose work contributes to the better promotion and protection of human rights. In 2007-2008, the Department for International Development is providing over £150 million core funding to UN agencies. In addition, it is providing funding in 2007-8 for specific programmes that promote fulfilment of human rights, including: the Action 2 Global Programme (£300,000); OHCHR's programme on rights and HIV/AIDS (£60,000); UNIFEM's women, peace and security programme (approx £1.5 million); and UNDP's Millennium Development Campaign (£750,000)

#### Commitment to work for progress on human rights internationally

- The UK will continue to encourage <u>ratification of UN human rights instruments</u> to which it is a party and, through development and other assistance programmes, their successful implementation by governments.
- ii. Recognising that development and human rights are interlinked and mutually reinforcing, the UK will continue to support country-led development strategies that integrate human rights. The UK Government is committed to the Millennium Development Goals (MDGs) and is working hard to promote sustainable development and reduce poverty. We aim to develop effective partnerships with governments based on a shared commitment to: poverty reduction and reaching the MDGs; respecting human rights and other international obligations; and strengthening financial management and accountability.

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- iii. The UK will continue to seek to advance human rights themes, developing international thinking and consensus. For example:
  - The UK Government is committed to tackling all forms of <u>gender-based violence</u>. Domestic work is guided by Action Plans on Domestic Violence, Sexual Violence and Abuse, Trafficking, and Forced Marriage; and by a national strategy on prostitution. The Association of Chief Police Officers has recently issued a draft Honour-Based Violence Strategy and 2-year Action Plan that sets out proposals for improving police response to honour-based violence including honour killings and female genital mutilation. Internationally, we remain committed to the full implementation of <u>UN Security Council Resolution 1325</u> on Women, Peace and Security, and are one of the few UN member states to have drawn up a National Action Plan for its implementation.
  - <u>Torture</u>. The UK is committed to combating torture wherever and whenever it occurs. Domestically, establishment of the UK's National Preventive Mechanism under Optional Protocol to the Convention Against Torture (OPCAT) is expected during 2008. Internationally, we will continue to encourage ratification of the Convention and its Optional Protocol, and provide assistance for their successful implementation by governments. The UK fully supports the recently-established OPCAT Subcommittee and will continue to provide support and assistance to it where appropriate.
  - Contemporary forms of slavery: The UK is committed to learning the lessons of its own past, and to tackling modern-day slavery. We have pledged £20,000 to a UN memorial for the victims of the slave trade, and led the creation of a new UN Special Rapporteur on contemporary forms of slavery at the Human Rights Council in 2007. The UK became a signatory to the Council of Europe Convention on Action Against Trafficking in Human Beings, and launched a national Action Plan on Human Trafficking, in March 2007. We are committed to their full implementation and intend to ratify the Convention by the end of 2008. We are playing a leading role against trafficking within the European Union including leading an initiative on Human Trafficking. This is linked to a national police-led anti-trafficking operation that was launched in October 2007 and is on-going. So far the operation has led to more than 300 arrests and over 600 premises have been visited. In excess of £400,000 has been seized in cash with a number of money laundering investigations taking place. The UK Human Trafficking Centre, established in 2006, is playing a key role in the operation. The UK fully supports the UN Office on Drugs and Crime's Global Initiative to Fight Human Trafficking and Modern-Day Slavery, and played an active role in the Vienna Forum in February 2008.
  - <u>Right to education</u>. The UK Government announced in 2006 that we will spend £8.5 billion in support of
    education over the next 10 years, mostly in sub-Saharan Africa and South Asia. This long-term
    commitment will provide governments with predictable funding against which they can prepare
    ambitious 10-year investment plans to achieve their education goals. Promoting gender equality in
    education is a key focus for the UK.
  - <u>Health</u>. The UK is committed to the containment and progressive elimination of the spread of HIV/AIDS, and prioritises the needs of those groups most at risk of HIV/AIDS. The UK is the second largest bilateral donor to combating AIDS and committed £1.5 billion over the period 2005-2008, of which around 10% will be spent on programmes for children.
  - The UK will continue to engage business as a positive force for the promotion of human rights through its leading work on <u>Corporate Social Responsibility</u>. The Foreign and Commonwealth Office's Corporate Social Responsibility Strategy, published in February 2007, reaffirms UK support for voluntary multi-stakeholder initiatives including the UN Global Compact, and for the Voluntary Principles on Security and Human Rights.
  - The UK works to promote human rights in our international relations. We are committed to the fundamental values of the <u>Commonwealth</u>, including tolerance, respect, democracy, good governance, human rights, gender equality and the rule of law. We will continue to work with Commonwealth partners to share best practice and learn from the experience and heritage of our fellow members. We also engage with other international and regional organisations, such as the World Bank and the European Union, to promote better integration of human rights in their work.

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#### 4) Commitment to uphold highest standards of human rights at home

- The UK Government will endeavour to maintain <u>full implementation of all its obligations</u> under the international Covenants, Conventions and Optional Protocols to which it is party.
- i. The UK Government is committed to <u>tackling inequality and discrimination</u>, to ensure that every individual is able to fulfil their potential through the enjoyment of equal opportunities, rights and responsibilities. For example:
  - We are committed to <u>modernising British equality legislation</u> into an Equality Bill, combining legislation against discrimination on the grounds of sex, race, disability, religion or belief and sexual orientation. The Government has also consulted on potential measures to expand protection against discrimination on the grounds of age to the provision of goods and services. The new Commission for Equality and Human Rights began work on 1 October 2007, as an independent and influential champion for the reduction of inequality, elimination of discrimination, protection of human rights and strengthening of good relations between individuals.
- The UK was one of the first to sign the new UN Convention on the Rights of Persons with Disabilities on 30 March 2007. We are committed to ratification without undue delay.
- Through its dedicated 3 year strategy to increase <u>race equality and community cohesion</u> ("Improving Opportunity, Strengthening Society") the Government has brought together practical measures to improve opportunities for all, helping to ensure that a person's racial or ethnic origin is not a barrier to success. Looking forward, the Government has embedded commitments to reduce inequalities for people from minority ethnic backgrounds into its key public service targets for the next 3 years in areas like employment, education, health and the criminal justice system. These targets, and the funding that will follow them, demonstrate the Government's continuing commitment to tackling inequalities.
- Where the responsibility for these matters is transferred to, or where matters are specific to Northern Ireland, we will also review equality legislation and in addition support the Equality and Human Rights Commissions and the Commissioners for Children and Young People and Victims and Survivors.
- iii. Protection of <u>children's rights</u> remains a key priority for the UK government and its devolved administrations. We have put in place a substantial body of legislation, which serves further to enshrine in law the well-being of children. Encompassing the principles of the UN Convention on the Rights of the Child, this creates an effective national framework to support positive outcomes for children. We continue to strengthen our focus on the needs of children and their families in a holistic and integrated way, ensuring that every child gets the best possible start in life, and receives the ongoing support and protection they need to allow them to fulfil their potential. We have established Commissioners for Children and Young People across the UK.
- iv. The UK Government will continue to pursue human rights goals in a spirit of consultation, openness and accountability. To this end, we will continue actively to seek out the expertise and experience of <u>civil</u> <u>society</u>, and will maintain a dialogue on our human rights work with NGOs and Parliament.

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# United Nations

General Assembly

A/62/838

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Zambia

Sixty-second session Agenda item 113 (d) Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council

# Note verbale dated 5 May 2008 from the Permanent Mission of Zambia to the United Nations addressed to the President of the General Assembly

The Permanent Mission of the Republic of Zambia to the United Nations presents its compliments to the President of the General Assembly at its sixtysecond session and has the honour to inform him that the Government of the Republic of Zambia has decided to present its candidature to the United Nations Human Rights Council for the term 2008-2011 in the elections to be held on 21 May 2008 in New York.

In accordance with General Assembly resolution 60/251, an aide-memoire on Zambia's achievements, voluntary pledges and commitments towards the universal promotion and protection of human rights is attached herewith (see annex).



# Annex to the note verbale dated 5 May 2008 from the Permanent Mission of Zambia to the United Nations addressed to the President of the General Assembly

#### Aide-memoire: voluntary pledges and commitments of the Republic of Zambia on human rights in accordance with resolution 60/251

 The Republic of Zambia remains committed to promoting universal respect for the advancement of all human rights and fundamental freedoms for all. Zambia is also committed to the promotion of the effective coordination and the mainstreaming of human rights within the United Nations system.

2. Zambia's Constitution recognizes and declares that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual regardless of race, place of origin, political opinion, colour, creed, sex, or marital status. The main guiding principle of Zambia's Foreign policy which relates to human rights also clearly states that there can be no meaningful development without the full protection of fundamental human rights and freedoms. Furthermore true peace can only be achieved when these rights and freedoms are fully protected and promoted and enjoyed by all. These fundamental principles have shaped Zambia's development in the socio-economic, political and cultural spheres and indeed Zambia's engagement in international affairs.

#### Zambia's International Human Rights Record

3. As a member of the Human Rights Council, Zambia remains committed to the promotion and Protection of human rights and this can be seen from the measures taken in ensuring that Government meets its international human rights obligations. It should be stated that Zambia is up to date with its international and regional state party reporting obligations.

4. Zambia has played an active role in key human rights organizations at the United Nations. As a member of the Human Rights Commission, which has since been abolished, in 1980-1982, 1991-1993, 2000-2002 respectively; and a founding member of the Human Rights Council in 2006, Zambia participated and continues to participate in major deliberations on various aspects of human rights and took important decisions which contributed to advancing human rights globally.

- 5. Zambia is party to the following United Nations human rights treaties namely:
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- 6. Other related Human Rights Instruments to which Zambia is Party
- African Charter on Human and People's Rights (ACHPR)
- United Nations Convention relating to the Status of Refugees
- United Nations Protocol relating to the Status of Refugees
- Four Geneva Conventions of 1949
- Protocols to the Geneva Conventions
- Seven International Labour Organization Fundamental Human Rights Conventions
- Rome Statute of the International Criminal Court (ICC)

 Zambia is also a party to regional initiatives aimed at promoting gender equality and empowerment of women such as the Southern African Development Community (SADC) Declaration on Gender and Development and its addendum on the Prevention of Violence against Women and Children.

# Zambia's Domestic Human Rights Record

# Legislative and Administrative Measures

8. The Government of Zambia is pleased to report some of the Legislative and Administrative Measures that have been undertaken in enhancing human rights as follows:

9. At the national level, the National Plan of action for Human Rights for the period 2002 to 2009 was adopted in 1999. This plan of action shall continue to provide guidance and a framework for the effective promotion and protection of human rights in Zambia.

10. A number of Institutions have been instrumental in promoting human rights in Zambia:

# Human Rights Commission

The human Rights Commission was established in 1996 specifically to focus on protection and promotion of human rights. The Commission whose mandate includes the investigation of human rights violations; mal-administration of justice and proposes effective measures to prevent human rights abuses, has since its inception enhanced its accessibility through a decentralization programme which has seen the establishment of provincial offices; thematic Committees on gender equality rights, children's rights, civil and political rights, economic, social and cultural rights and the committee against torture; partnership and collaboration with various stakeholders; establishment of a prohibited immigrant's fund and a complaints data base. The Commission, whose services are free, publishes its report annually. The report is a public document which is also tabled before Parliament and gives the state of human rights in the country.

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# I. Police Public Complaints Authority

The Police Public Complaints Authority (PPCA) which commenced its operations in 2002, addresses public complaints against police misconduct in order to secure individual fundamental human rights and freedoms and achieve professionalism in the Zambia Police Service.

III. Other Institutions such as the Law Association of Zambia and the Civil Society and Non Governmental Organizations (NGOs) have partnered with Government in advocating and ensuring that human rights are promoted and respected.

### Other Legislative and Administrative Measures

I. In the area of Discrimination against women, Zambia has finalized the 5<sup>th</sup> and 6<sup>th</sup> periodic report on the CEDAW and will soon present the report to the CEDAW Committee for its consideration.

II. In the area of gender based violence, especially against women and children, the penal code has been amended to introduce stiffer penalties for perpetrators of gender violence including sexual offences. Zambia has also domesticated in part the provisions of CEDAW as they relate to violence against women.

III. Government has ratified the Optional Protocol of the African Charter on Human and Peoples Rights on the Rights of Women.

IV. The Government has also constituted the Victim Support Unit (VSU) and the Sex Crimes Unit within the police service to address reports on gender violence and particularly violence against women and children.

V. Zambia also wishes to facilitate debate on the Gender Based Violence Bill through the Law Development Commission.

VI. The Citizenship Empowerment Act of 2006, prohibits discrimination on grounds of gender. The Act has also facilitated the establishment of the Economic Empowerment Commission which provides for gender equality in accessing, owning, controlling, managing and exploiting economic resources.

VII. Zambia Development Agency Act of 2006 mandates the Agency to recommend, to the Minister responsible for Trade, coherent trade and industry development strategies which promote gender equality in accessing, owning, managing, controlling and exploiting economic resources. It also encourages, supports and facilitates the creation of micro and small scale business enterprises and promotes women's participation in trade and industry. Through this Act, it is recognised that, women who form a large part of the informal sector and predominantly reside in rural areas shall benefit from the initiatives contained therein.

VIII. The establishment of the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender Matters is an effective tool in monitoring the actions of central Government with regard to the rights of women and children. The recommendations of the Parliamentary Committee are given full board and attention because of the impetus that they add in assisting central Government in the implementation of women and children's rights. The Committee in 2006, recommended that there was need to strengthen the legislation on human trafficking.

IX. Zambia ratified the protocol to prevent and Suppress and Punish Trafficking in Persons especially women and Children (Palermo Protocol) Supplementing the United Nations Convention Against Trans-national Organized Crime.

X. In the Area of Disabilities, the government intends to formulate and implement inclusive policies programmes and legislation in order to promote the full participation, equality and empowerment of persons with disabilities.

XI. Zambia has ratified the ILO conventions granting the right to just and favourable conditions of work and the right to form and join a trade union. The said conventions were domesticated through a 1997 legislative amendment to the Industrial and Labour Relations Act.

XII. Zambia recognizes the right of everyone to social security including social insurance and has ratified ILO convention NO. 103 and has in existence the National Pensions Scheme Act and the Workers Compensation Fund Control Board Act which are the national legislation on social security and protection against occupational hazards meant to secure the right to social security for all concerned.

XIII. The Employment of Young Persons Act, prohibits the employment of a child under the age of 14 years in any public or private industrial undertaking and makes it an offence for any one to do so.

XIV. The National Food & Nutrition Commission Act, establishes the Nutrition Commission to address the issues of disseminating knowledge of the principles of nutrition in furtherance of affording the right to food and adequate standard of living.

XV. The Education Act and other provisions relating to corporal punishment were amended in 2003 abolishing corporal punishment in schools and other places.

XVI. The Commission for Investigation (Commission for Investigation No. 2 of 1991) was established with the function to receive and investigate complaints from the public against acts of injustice or mal-administration perpetrated by senior Government officials, heads of parastatal institutions and local authorities. The Commission ensures fairness by promoting social justice in the administration of public institutions.

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XVII. Through the Societies Act NGOs have been registered to among other things sensitize and educate members of the public on issues of human rights and also offer legal assistance to the vulnerable.

XVIII. The Constitution recognizes the right of persons to legal representation of their choice and in this regard the Government has established the Legal Aid Department which provides free legal services to people facing serious criminal offences who can not afford to pay for a private lawyer.

#### PLEDGES AND COMMITMENTS IN HUMAN RIGHTS

#### 11. International Commitments

I. Zambia as a member of the Human Rights Council will continue to support the Council and work closely with other members of the Council and Observers to safe guard and promote the universal respect for the protection of human rights and fundamental freedoms for all and promote the effective coordination and mainstreaming of human rights within the United Nations system.

II. Zambia is committed to the institutions that have been created by the Council including the Universal Periodic Review Mechanism.

III. Zambia will continue to work in the Council towards strengthening these structures to ensure that the Council develops into a strong body that is transparent, non selective and promotes dialogue and cooperation with Member States. It should be noted that Zambia will be reviewed in May 2008 and therefore pledges to fully cooperate with the Universal Periodic Review Mechanism during and after the review process.

IV. Zambia will continue to support the Office of the High Commissioner on Human Rights (OHCHR), which represents the world's commitment to universal ideals of human rights. We welcome in that regard the increased funding to the office to enable it carry out its mandate of promoting and protecting human rights.

 Zambia will continue to respect the provisions of protocols relating to human rights both regionally and globally.

VI. Zambia undertakes to ratify the Convention on the Rights of Persons with Disabilities and shall endeavour to also sign and ratify the Optional Protocol thereto that was adopted by the General Assembly on 13 December 2006 and was open for signature on 30 March, 2007.

VII. Zambia will accelerate the process of signing the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

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VIII. Zambia will also speed up the process of signing the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women.

Zambia having been host to refugees for four decades shall continue to work closely with the UNHCR in supporting refugees and performing its international protection responsibilities, thereby ensuring that its obligations are met with regard to international human rights and humanitarian law.

Zambia having supported the United Nations in the maintenance of International Peace and Security will continue to contribute to United Nations Peace-keeping Operations by providing military, police and civilian personnel to Peace-keeping Operations around the world, including in Darfur (UNAMID), Democratic Republic of the Congo (MONUC), Ethiopia/Eritrea (UNMEE), Kosovo (UNMIK), Liberia (UNMIL), Sierra Leone (UNIOSIL), Southern Sudan (UNMIS) and Timor-Leste (UNMIT).

#### 12. Domestic Commitments

I. Zambia has developed a Fifth National Development Plan for the period 2006-2010 which has prioritized the promotion and protection of human rights. One of the activities that will be undertaken in order to achieve this objective is the domestication of international human rights treaty provisions which are not already part of Zambian legislation.

II. Zambia will continue to cooperate with United Nations human rights treaty bodies by meeting deadlines for submission of periodic reports and acting on their concluding observations and recommendations. As earlier indicated Zambia is up to date with its international and regional State party reporting obligations. Zambia will also continue to participate in the discussions on the reform of treaty bodies in ensuring a more effective monitoring system.

III. Zambia has endeavoured to undertake human rights programmes that balance the different dimensions of human rights. For instance Government programmes are targeted towards the promotion of civil and political rights, economic social and cultural rights, and also specific rights of vulnerable groups including women children and the disabled.

IV. At the national level, the Government embarked on Constitutional and Electoral reforms by constituting the Constitutional Review Commission (CRC) and the Electoral Reform Technical Committee (ERTC) which have since submitted their reports to the Government. With regard to the CRC, Government has established a National Constitutional Conference to consider and deliberate the provisions of the draft Constitution. As far as the Electoral Act is concerned, the Government has moved further to amend the electoral act which regulates the conduct of elections in Zambia. The principal measure in this Act was that the Electoral Commission was explicitly empowered by law to ensure that parties participating in elections desist from corrupt practices. It is envisaged

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that this measure will encourage citizens including women to participate freely in elections as voters and candidates.

V. Zambia will continue to work with civil society and NGOs in the promotion and implementation of human rights programmes.

VI. Zambia as a developing country faces numerous challenges in meeting various human rights obligations and development challenges particularly in the areas of poverty reduction, eradication of diseases such as malaria, tuberculosis and HIV/AIDS; and meeting national and internationally agreed development goals. Zambia is however committed to addressing these challenges and with the assistance and cooperation of the international community particularly in the areas of building capacities of its national institutions and legal systems and developing human resources in the field of human rights, will strive to ensure that it provides for its citizens.

# **CHRI Programmes**

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

# **Human Rights Advocacy**

CHRI makes regular submissions to official Commonwealth bodies and member governments. CHRI conducts fact finding missions periodically and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit ensures that human rights issues are in the public consciousness.

# **Access to Information**

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policymakers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

# Access to Justice

**Police Reforms:** In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pretrial detention and prison overstays, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

The year 2008 saw the United Nations Human Rights Council (UNHRC) begin its proceedings in the new human rights mechanism, the Universal Periodic Review (UPR). During the year, 12 Commonwealth countries were reviewed under the UPR, including: South Africa, India, United Kingdom, Ghana, Pakistan, Zambia, Sri Lanka, Tonga, Botswana, Bahamas, Barbados, and Tuvalu; one Commonwealth country, Sri Lanka, was voted out of the UNHRC. However, 2007-2008 marked far more than the first sessions of the UPR Mechanism and Council elections. Beyond even individual country performance at the Council, 2008 marked important anniversaries which represent international rallying points for the human rights community, as well as opportunities to collectively galvanize others into action. In particular, the 60th anniversaries of the Universal Declaration of Human Rights and of the Genocide Convention; and the twin 10th anniversaries of the Declaration on Human Rights Defenders and of the Guiding Principles on Internal Displacement, and the 15th anniversary of the Vienna Conference. With the Commonwealth having also formed a new grouping within the Council during the year, this may represent a potential turning point, where the Commonwealth could demonstrate a new collectivity amongst regional voting blocs.

The 2007/08 edition of this Report represents research and analysis of the performance of those Commonwealth countries who are members of the Council.



COMMONWEALTH HUMAN RIGHTS INITIATIVE B-117, IInd Floor, Sarvodaya Enclave, New Delhi - 110 017 Tel.: +91-(0)11 2686 4671, 2685 0523 Fax: +91-(0)11 2686 4688 info@humanrightsinitiative.org; www.humanrightsinitiative.org