

Human Rights Council, Second session

Getting down to the implementation of General Assembly resolution 60/251

1. Introduction

The second session of the Human Rights Council (the Council), taking place from 18 September to 6 October 2006, will invariably spend a considerable amount of time on wrapping up the business of the Commission on Human Rights (the Commission) as well as developing its own architecture and working methods. It is essential that the Council builds on the Commission's strengths while at the same time developing new measures and working methods that could help it overcome some of the difficulties which hampered the work of the Commission.

While the focus on institution-building is both necessary and essential, the Council must also consider and respond to situations of human rights violations. Amnesty International takes this opportunity to draw the attention of the Council to a number of such situations that can be addressed at various points during the Council's program of work: the human rights crisis in Darfur and Eastern Chad, concerns around maternal and infant health in poor and marginalized communities in Peru, a worrying escalation of human rights violations in Sri Lanka, the denial of rights for the "erased" in Slovenia, and the human rights and humanitarian crisis in Israel, the Occupied Territories and Lebanon.¹

2. Review of the system of Special Procedures of the Human Rights Council

"Decides that the Council will assume, review and, where necessary, rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human in order to maintain a system of special procedures"

General Assembly Resolution 60/251, Operative Paragraph 6

The Human Rights Council's Special Procedures are at the core of the UN human rights machinery. As independent and objective experts able to monitor and rapidly respond to allegations of violations occurring anywhere in the world, they play a critical and often unique role in promoting and protecting human rights. They are among the most innovative, responsive and flexible tools of the human rights machinery.

During the negotiations leading up to the creation of the Council, there was broad agreement among member states that one of the main achievements of the Commission was

¹ In describing these situations, Amnesty International wishes to point out that its concerns about the situation of human rights in individual countries extend far beyond these situations as the organization's annual report and other publications demonstrate.

its system of Special Procedures and that this should be preserved and strengthened in the Council. That broad agreement is reflected in the General Assembly resolution 60/251 establishing the Council which requires the Council to maintain a system of Special Procedures.² As decided by that resolution, the Council has assumed all the mandates, mechanisms, functions and responsibilities of the Commission. The resolution further decided that a review should be undertaken of these mechanisms and mandates, and where necessary strengthen and rationalize them. At its first session in June 2006, the Council accordingly established an open-ended intergovernmental Working Group to carry out this task through intersessional, transparent, well scheduled and inclusive consultations.³ On this occasion, the Council also decided to extend the mandates and terms of mandate-holders for one year subject to the outcome of the review.⁴

Amnesty International looks forward to participating actively in the review, which must aim to develop a comprehensive, coherent and improved system of Special Procedures operating as a component of, and complement to, other parts of the UN human rights machinery, to strengthen the enjoyment of human rights by rights holders and to enable the Council to fulfil its mandate to promote universal respect for the protection of all human rights for all. In carrying out the review, the Council must be attentive to identifying rights, themes and violations that are not covered by existing mandates so that gaps can be filled. In addition, the review must aim to enhance the Special Procedures as an institution, so that there is better integration of the information and analysis by the Special Procedures throughout the Council's activities; consistent follow-up to recommendations and requests by the Special Procedures; improved cooperation between governments and Special Procedures, including both access to countries and territories and responsiveness to the Special Procedures' observations and recommendations; a more rigorous identification and selection process for mandate-holders to ensure the highest standards of expertise, independence and objectivity; and increased professional and expert support from the Office of the High Commissioner for Human Rights to ensure that the Special Procedures can operate effectively.

3. Consideration of the reports of the Special Procedures

At the first session the Council decided that to consider, at the second session, the reports of all the Special Procedures submitted to the 62nd session of the Commission on Human Rights.⁵

Forty-one mandates are submitting written and oral reports. Amnesty International welcomes the decision by the Council to build on the Commission's practice of holding an

² General Assembly resolution 60/251, OP6

³ Human Rights Council Decision 1/104

⁴ Human Rights Council Decision 1/102

⁵ Human Rights Council Decision 1/105

interactive debate around the reports of the Special Procedures, and to strengthen these by ensuring predictability of and devoting more time to the interactive debates, and allowing all observers, including national human rights institutions and non-governmental organisations, to participate in the dialogues.

The Council will be presented with the finding and recommendations arising from country missions by the Special Procedures, undertaken since the 61st session of the Commission, to at least 40 states from all regions, as well as reports on the situation in other countries to which access to visit had not been granted. These reports identify positive aspects in the countries concerned as well as a range of recommendations requiring action by the state concerned or the international community to improve the human rights situation. In some cases, the reports highlight situations of widespread and systematic human rights violations and highlight the need for action to halt a further deterioration of the human rights situation. It is critical that the Council engage in dialogue with its Special Procedures and other stake-holders on the key recommendations arising from their reports in order to identify an appropriate and effective response, and that the Council integrates the findings of the Special Procedures into its actions under other agenda items. In order to ensure better follow-up, the Council should schedule a time for reviewing the implementation of the recommendations contained in the reports of the Special Procedures, for which the state concerned should be encouraged to provide information on measures taken to give effect to the recommendations.

The Council should pay close attention to reports about measures taken by states to follow-up on country missions, in particular those states which have failed to provide such information and those which have made minimal attempts to implement the recommendations.

It will also be important for the Council to take note of the information contained in the main reports of the Special Procedures, including about situations where states repeatedly fail to respond to requests to visit by the Special Procedures, in some cases despite the extension of a standing invitation. The Council should give special attention and take action in respect of requests for visits by the Special Procedures which have been outstanding for many years.

The Special Procedures' reports also contain summaries of communications with governments regarding specific cases of violations of human rights. The interactive dialogue provides an opportunity for the Council to hear the Special Procedures' assessment on the basis of these communications, including early warning of deteriorating situations. The Council should be particularly mindful of situations where states do not respond to communications at all, or only partially so, or deny allegations without substantive explanation, and respond accordingly.

The interactive dialogue is also an opportunity for the Council to discuss the results of the many studies carried out by the Special Procedures to advance understanding of progress

or impediments to the full enjoyment of human rights. These reports also contain recommendations and it is important that the Council itself take action and encourage follow-up by member states.

4. Development of the Universal Periodic Review mechanism

“Decides that the Council will undertake a universal periodic review, based on objective and reliable information, of the fulfilment 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”

General Assembly Resolution 60/251, Operative Paragraph 5 (e)

The creation of a Universal Periodic Review (UPR) mechanism is a key element in General Assembly resolution 60/251 establishing the Council. The Council will have a number of mechanisms and procedures with which to carry out its work on country situations; however, the UPR mechanism has the potential to be among the most important.

The resolution also tasked the Council with developing, within one year of its first session in June 2006, the modalities and necessary time allocation of the UPR mechanism.⁶ Accordingly, at its first session the Council established an open-ended intergovernmental Working Group which has started informal consultations.⁷

The Commission on Human Rights, which the Council replaces, was hampered by accusations of unprincipled selectivity in its approach to individual country situations and resort to double standards.⁸ It is therefore important that the Council be equipped to address human rights situations with consistency, objectivity and transparency and to engage in constructive dialogue with states to ensure compliance with human rights obligations and commitments. A UPR mechanism that is transparent and effective and treats all states on an equal basis will be a key tool for the Council in this regard.

⁶ OP5 (e)

⁷ Human Rights Council decision 2006/103

⁸ In the report of the High-level Panel on Threats, Challenges and Change, the Panel noted that the Commission's capacity to promote respect for human rights and to respond to violations in specific countries had been "undermined by eroding credibility and professionalism" (*A more secure world: our shared responsibility*, Report of the High-level Panel on Threats, Challenges and Change, A/59/565). The UN Secretary-General further noted that "[the Commission's] ability to perform its tasks has been overtaken by new needs and undermined by the politicization of its sessions and the selectivity of its work (In larger freedom: towards development, security and human rights for all, Report of the Secretary General (A/59/2005)).

Amnesty International recommends the following principles, – grounded in General Assembly resolution 60/251 – to guide the Council in developing the UPR mechanism and assessing specific proposals:⁹

1. **Equal treatment and non-selectivity:**¹⁰ The conduct and the modalities of the review must be the same for all UN member states. This should extend to the periodicity of review, the procedures followed, and the common core standards on which the review is based. However, the substantive issues addressed in the review and its outcome should be country-specific.
2. **Universality:**¹¹ The review must be designed to assess the promotion and protection of all human rights in all states. The preparatory process should consider the fulfilment of *all* human rights obligations and commitments in the state under review, but effectiveness requires that each review focus on particular issues in each state as the best way to improve the enjoyment of rights in the state under review.
3. **Transparency:**¹² The review must be public and transparent in all respects for all concerned parties. Full transparency should apply to the information that is used as the basis for the review, the review process, the inter-active dialogue, the outcome of the review, and the implementation of recommended measures and other follow-up.
4. **Efficiency:**¹³ The review must make the best possible use of the resources available to the Human Rights Council. The corollary of this is that sufficient resources must be made available for the UPR modalities that are established. An efficient process demands thorough preparation for each review, a commitment to cooperate by all parties involved, well-focussed decisions and recommendations in the outcome of the review, and sustained implementation of those decisions and recommendations.
5. **Effectiveness:**¹⁴ The review must aim at recommendations that are likely to lead to states better fulfilling their human rights obligations and commitments and protecting rights-holders. Such recommendations should be realistic in terms of what is required to implement them. The review process should be well-informed and take account of the capacity and available resources in the reviewed state, other states and the parts of the UN system that will be expected to contribute to the implementation of measures recommended in the review.

⁹ See also Amnesty International, Ten principles to guide the creation of an effective Universal Periodic Review mechanism (AI Index: IOR 40/033/2006).

¹⁰ GA Resolution A/RES/60/251 Preambular paragraph (PP) 9, operative paragraph (OP) 5(e) and principles of universality, impartiality and non-selectivity in OP4.

¹¹ This is closely related to, but distinct from, the principle of equality. PP3, OP2, OP4.

¹² OP12.

¹³ PP8, OP6, OP9.

¹⁴ OP3, OP5 (d), OP12.

6. **Complementarity:**¹⁵ The review should both draw on and reinforce other elements of the UN human rights program, particularly the treaty bodies and the Special Procedures. In addition to avoiding duplication with the human rights treaty bodies,¹⁶ it should respect the mandates and priorities of other UN human rights mechanisms, bodies and offices. The UPR is one means among others by which the Council can address situations in particular countries. The various options for action by the Council in respect of the human rights situation in individual countries should complement one another.¹⁷
7. **Credibility:**¹⁸ The information that is used as the basis for the review, the review process itself (including the inter-active dialogue) and its outcomes must be credible to the participants in the review and to an informed public. While constructive international dialogue and cooperation should guide the UPR, the review should be direct and focused in addressing shortcomings by states in the fulfilment of their human rights obligations and commitments.
8. **Continuity:**¹⁹ The review must be an internally coherent process that encompasses preparation, the review based on interactive dialogue, the outcome and follow-up. Each review should form part of a cycle that leads to ongoing improvement in a state's fulfilment of its human rights obligations and commitments and in which subsequent reviews build on the outcome of the preceding review.
9. **Cooperation:**²⁰ As a cooperative mechanism based on interactive dialogue, the review must be designed to promote cooperation among all participants, including the state under review. However, the UPR must be creative and robust enough to be able to cope with situations where cooperation from the state under review is not forthcoming.
10. **Full involvement of the country concerned:**²¹ All relevant sectors of society of the country under review, including its government, civil society, including non-governmental organizations and independent national human rights institutions, should have the opportunity to effectively contribute to the preparation of the review, the interactive dialogue, the outcome and its follow-up.

¹⁵ OP5 (e).

¹⁶ As required by OP5 (e).

¹⁷ OP4, OP5 (f), OP10.

¹⁸ OP3, OP4, OP5(e)

¹⁹ OP12

²⁰ PP1, OP4, OP5(e), OP9

²¹ PP11, OP5 (e), OP5 (h).

5. Situations of human rights

At the second session, the Council will be able to consider and respond to situations of human rights violations, including under the agenda item on “other issues”. Amnesty International takes this opportunity to draw the attention of the Council to a number of human rights situations. Each of these exemplify an aspect of the Council’s mandate to consider the situation of human rights in specific countries, including to promote 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;²² to address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon;²³ and to contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies.²⁴

Darfur and eastern Chad – civilians continue to suffer grave abuses

“Decides that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”

General Assembly Resolution 60/251, Operative Paragraph 3

Darfur’s civilian population urgently needs protection. Since the start of the crisis in Darfur in 2003, tens of thousands have been killed, tortured or raped in attacks on villages by Sudan’s armed forces and Janjawid militia and more than two million people have been displaced; three years on the situation has not improved. The government has recently launched a new major military offensive involving its armed forces as well as the Janjawid, the scale of which Darfur has not witnessed for nearly a year. Humanitarian aid, already diminished due to lack of security, has ceased completely in some areas, with the entire Darfur aid operation now under threat of collapse. What Darfuris want above all else is security: a halt to the fighting, the disarmament of the Janjawid, and eventually to return in safety and dignity to their land. Despite the current efforts at creating peace, safety remains elusive for civilians in Darfur, and now also across the border in eastern Chad.

In West Darfur State, the control by the Janjawid is near complete. Here, the vast majority of the original residents, driven from their homes by the Janjawid at the beginning of the conflict, reside in camps for the internally displaced (IDP). As the Janjawid now occupy the land, still armed and backed by the Sudanese government, there is no option of return or even venturing outside the IDP camps, for fear of attack by the Janjawid. Even inside the camps residents continue to face violations of their human rights. Janjawid often enter camps

²² General Assembly resolution 60/251, Operative Paragraph (OP) 2

²³ Ibid, OP 3

²⁴ Ibid, OP 5 (f)

and beat or loot the displaced. Men found by the Janjawid outside the camps are regularly tortured and killed. Women are generally not killed by the Janjawid, but are often raped or abducted.

In other parts of Darfur, attacks between parties to the conflict still occur. Civilians are often killed or injured, and the fear of attack leads to new displacements. Humanitarian access to the displaced continues to be restricted; nearly half a million displaced in North Darfur did not receive food aid in July this year.

Amnesty International has also documented attacks over the past year by the Janjawid into eastern Chad, devastating communities targeted according to ethnicity.²⁵ The attacks are accompanied by killings and looting and have resulted in large-scale displacement of most populations from the border. In response the targeted population in eastern Chad have reportedly begun arming themselves. The danger of an escalation of conflict at the end of the rainy season in October is clear; the conflict in Darfur has spread already to eastern Chad, but it can spread further still.

The Sudanese government appears unwilling to take measures to protect civilians; indeed the security forces are often responsible for attacks on civilians. Janjawid have been incorporated into some of the security forces, most notably the Border Intelligence Guard. A government so closely implicated in attacks against its own people is unlikely to simultaneously protect them effectively. The Sudanese government has never admitted responsibility in the displacement of some two million of its own people. Inside and around the IDP camps the Sudanese police do not take effective action to protect the IDPs or to investigate complaints of human rights violations. Outside the camps lawlessness prevails with the Janjawid in control. Nothing has been done to prevent cross-border attacks by the Janjawid.

The African Union's peacekeeping force, African Union Mission in Sudan (AMIS) is under-resourced and is unable to protect civilians. It no longer has the confidence of the Darfuris as it is powerless to stop attacks either within or outside the camps. Although the government has agreed to an extension of the African Union peacekeeping mission in Sudan until 31 December 2006, this is not a major concession. It is the absolute minimum of what is required to protect the people of Darfur and AMIS must be replaced, as soon as possible, with a strong UN peacekeeping force. However, as long as AMIS is the only protection force present, the international community must ensure that it remains in place and that it is strengthened until replaced by a UN force.

Over the last three years the situation in Darfur has been subject to a plethora of reports documenting the violations of international human rights and humanitarian law occurring in the region. These include the report of the then acting High Commissioner for

²⁵ See *Amnesty International, Chad/Sudan: Sowing the seeds of Darfur* (AI Index: AFR 20/006/2006)

Human Rights on the “Situation of human rights in the Darfur region of the Sudan”,²⁶ the report of the International Commission of Inquiry established to investigate reports of violations of international humanitarian and human rights law in Darfur, Sudan;²⁷ as well as a number of reports by the Special Procedures.²⁸ Most of the recommendations made in these reports have not been implemented or only partially so.

Amnesty International recommends that:

- the Human Rights Council acknowledge the extremely serious, and continually deteriorating, human rights situation and the international community’s responsibility to immediately and effectively protect civilians in light of the Sudanese government’s failure to provide such protection;
- the Council call on Sudan to consent to the deployment of a UN peacekeeping mission to take over from AMIS as envisaged by the African Union and the UN Security Council;
- the Council ask the Special Rapporteur on the situation of human rights in Sudan to prepare a report, for consideration at its third session from 27 November to 8 December, on the human rights situation in Darfur and Eastern Chad, and in doing so also consider the state of implementation of recommendations by the UN in relation to the human rights situation in Sudan.

Peru: Poor and marginalized communities denied the right to maternal and infant health

“Decides 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.”

General Assembly resolution 60/251, Operative paragraph 2

Every year hundreds of women and children from poor and marginalized communities in Peru die unnecessarily because of discrimination in the provision of maternal and infant health care. Moreover, many children are denied the right to a birth certificate because of inadequate

²⁶ E/CN.4/2005/3 of 7 May 2004

²⁷ S/2005/60 of 1 February 2005/E/CN.4/2005/134 of 10 March 2005

²⁸ These include reports by the independent expert on the situation of human rights in the Sudan (E/CN.4/2005/11 of 28 February 2005), the Special Rapporteur on the human rights situation in the Sudan (E/CN.4/2006/111 of 11 January 2006), the Representative of the Secretary-General on the human rights of internally displaced persons (E/CN.4/2006/71/Add. 6 of 13 February 2006 and E/CN.4/2005/8 of 27 September 2004), the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7/Add.2 of 6 August 2004), and the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2005/72/Add.5, 23 December 2004).

access to and information about such health care services. Despite the development of a free governmental health programme for marginalized communities, effective health care is not reaching many women and children from poor communities, where women are at greater risk of health problems during pregnancy and child-birth, and children face higher risks of illnesses during the first years of life.²⁹

Discrimination against marginalized women and children is a long-standing problem in Peru. In its final report, issued in 2003, the Truth and Reconciliation Commission highlighted the link between poverty and social exclusion and the likelihood of poor people becoming victims of violence. The internal armed conflict in Peru, it noted, had exacerbated gender inequality and discrimination, and women suffered violations of their human rights including rape and other forms of torture.³⁰ As a result, the poor, in particular women and indigenous peoples, lacked access to economic, social and cultural rights.

According to recent figures from the Pan American Health Organization, maternal and child mortality rates in Peru are among the highest in the region. In the rural areas of the country, according to the Peruvian Ministry of Health, the likelihood of dying from maternity-related causes is twice as high as in urban areas. Furthermore, notwithstanding an increase in the overall number of women who have access to medical care during the prenatal period, delivery and postnatal period, considerable differences persist between urban and rural areas.

Amnesty International's research into the enjoyment of the right to health in some of Peru's poor and marginalized communities identifies as one of the main obstacles to accessing health services the lack of financial resources to pay for services and for transport to health centres. Although the Comprehensive Health Insurance scheme provides maternal and child health care free of charge, testimonies gathered by Amnesty International indicate that frequently health centres do not have sufficient financial resources to cover other costs incurred in providing care and treatment. The centres are funded largely by charging users for services; consequently, priority is given to those who can afford to pay. According to women interviewed by Amnesty International in marginalized urban areas of Lima and in rural areas in Huánuco and Iquitos, people on low incomes are asked to pay for drugs, blood transfusions, the use of equipment and the cost of washing surgical gowns used during delivery and the post-partum rest period.

²⁹ See Amnesty International's report, *Perú – Mujeres pobres y excluidas. La negación del derecho a la salud materno-infantil* (AI Index: AMR 46/004/2006), available in Spanish. See also Amnesty International's press release *Peru – Poorest women and children are let down by discriminatory health services* (AI Index: AMR 46/017/2006).

³⁰ During its mandate, the Truth and Reconciliation Commission CVR documented more than 500 cases of sexual violence; in only 11 of these cases was the victim a man. The Commission further considered that rape was a common practice of the armed forces. *Final Report*, Volume VIII, "The factors which made violence possible", pp.45 and 48.

Furthermore, the Comprehensive Health Insurance scheme requires anyone wishing to use its health services to complete a complex questionnaire known as *Ficha de Evaluación Socioeconómica* (Socio-Economic Evaluation Sheet) covering information on personal identity, housing and employment. The formalities necessary to identify individuals from poor communities as entitled to free health services often constitute a further barrier to accessing such services, as do the scarcity of personnel available to assist patients with the questionnaire.

Women without financial resources to access health services are often also victims of other forms of discrimination. They are less likely to obtain an Identity Document, because the cost of this, as noted by the Office of the National Ombudsman, is a major barrier, particularly for people in poor indigenous communities. Furthermore, women who do not attend prenatal and postnatal checkups or who give birth at home are subject to fines, and some health centres impose charges for issuing a Certificate of Live Birth, which is required for registering a birth and obtaining a Birth Certificate. These factors make it difficult to acquire a National Identity Document, which is a compulsory document for Peruvians. Testimonies heard by Amnesty International in health centres in rural areas in the Andes and the Amazons, confirm that the practice of charging for issuing a Certificate of Live Birth is still widespread, and without such a Certificate other social benefits may be denied.

The authorities' failure to take account of culturally-specific beliefs regarding health, especially prenatal and postnatal health, creates a further obstacle to accessing health care by some communities. In rural areas, the Ministry of Health noted that local communities show considerable mistrust in personnel in health centres, as well as in techniques used during childbirth. According to recent statistics only just over 21% of women in rural areas give birth in health centres.³¹

A further obstacle to accessing health care is the lack of information about health issues and available services. In most of the health centres visited by Amnesty International in rural areas in the Amazons and the Andes, as well as in Lima, there was no clear and accessible information available to staff and patients about maternal and child health services for low-income patients.

International human rights mechanisms have recently raised Peru's failure to fully implement its commitments under international human rights law with regard to the right to health of women and children in poor and marginalized communities.

In January 2006, the UN Committee on the Rights of the Child expressed concern at the "de facto discrimination" which still exists towards vulnerable groups, including indigenous children and children living in rural and remote areas; the number of children who

³¹ Lineamientos de Política Sectorial para el Periodo 2002-2012, Ministerio de Salud (Ministry of Health), July 2002.

are not registered at birth,; and the inadequate access to health services especially in rural and remote areas of the country. The Committee also expressed concern at the rates of maternal, infant and under-five mortality, which, despite some improvements, continue to be among the highest in Latin America.³²

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health raised several concerns regarding sexual and reproductive health in Peru, in his report of February 2005, following a mission to the country. In particular, the Special Rapporteur urged the Peruvian authorities to formulate an equitable health strategy and policy in favour of poor people underpinned by the right to health, to address inequities, inequality and discrimination.³³

In its Concluding Observations in May 2006, the Committee against Torture dealt with the issue of access to health services in Peru and encouraged the government to take measures to effectively prevent acts that put women's health at grave risk, including by improving access to information and reproductive health services.³⁴

Amnesty International takes this opportunity to reiterate some of its key recommendations:

- to take effective measures to enable poor and marginalized groups to access maternal and child health services, including by allocating the necessary resources;
- to ensure effective dissemination of clear and comprehensible information about health issues and services, including in languages and formats that are accessible for members of poor and marginalized communities;
- to instruct health care facilities to issue Certificates of Live Birth for all newborns free of charge, and to desist from imposing fines on women who give birth at home;
- to implement the National Human Rights Plan, including by drawing up policies and programs to guarantee the right to maternal and child health, and to provide training on these issues for health care workers.

Amnesty International further recommends that:

- the Council encourage the Special Rapporteur on the right to health to follow up with the Peruvian government regarding the issues raised in the report of his June 2004 mission to Peru, bearing in mind also the recommendations listed above, and to include an update on this in his next report to the Council.

³² Concluding observations of the Committee on the Rights of the Child: Peru, 14 March 2006 (CRC/C/PER/CO/3).

³³ Report of the Special Rapporteur on the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to Peru (E/CN.4/2005/51/Add.3)

³⁴ Conclusions and recommendations of the Committee against Torture (CAT/C/PER/CO/4), 25 July 2006

Sri Lanka – urgent action needed to prevent a human rights crisis

“Decides that the Council will, inter alia [...] contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;”

General Assembly resolution 60/251, Operative paragraph 5 (f)

The human rights situation in Sri Lanka has deteriorated dramatically in recent months amid escalating violence. This year has seen the fiercest fighting between the government security forces and the Liberation Tigers of Tamil Eelam (LTTE) since the two parties to the conflict reached a ceasefire agreement in 2002. Fighting since April 2006 has resulted in the death and injury of hundreds of civilians, the displacement of more than 200,000 people, and the destruction of homes, schools, and places of worship. Neither the government security forces nor the LTTE appear to be taking adequate precautions to protect civilian lives.

Humanitarian aid agencies have been unable to reach many of those at greatest risk due to access restrictions and the lack of security guarantees from both parties to the conflict. Over the past year humanitarian and medical workers have been subjected to threats, harassment, abductions and other attacks. On 4 August 2006, 17 aid workers from the French aid agency, *Action Contre la Faim* (Action Against Hunger), were extra-judicially executed in the north-eastern town of Muttur, which had been the scene of heavy fighting.

Amnesty International is concerned that the Human Rights Commission of Sri Lanka has been weakened by the President’s unilateral appointment of new Commissioners in May 2006, and that the body may no longer fully comply with the Principles relating to the Status of National Institutions (The Paris Principles) nor with Sri Lanka’s own constitutional requirements. The failure to observe proper procedure in the appointment of new Commissioners has jeopardized the institution’s reputation for independence, without which it cannot properly carry out its task of monitoring human rights. Amnesty International is concerned that the new Commissioners may not have the necessary expertise and experience in the promotion and protection of human rights, and so far the Commission has not demonstrated strong leadership in addressing the country’s growing human rights crisis.

Over two decades of conflict in Sri Lanka have claimed the lives of more than 65,000 people, the majority of them civilians. Previous phases of the war have been marked by grave human rights violations and abuses by both sides. Amnesty International has documented thousands of cases of arbitrary arrest and detention, torture, enforced disappearances and extrajudicial executions by members of the security forces, often working together with armed groups. Members of the LTTE have been responsible for abductions, both targeted and indiscriminate attacks against civilians and civilian objects, including through the use of suicide bombers, and the widespread recruitment of child soldiers.

The ceasefire agreement has been steadily undermined over the years by growing numbers of reported breaches, many of which constitute human rights violations and abuses, such as politically motivated killings, abductions, and the recruitment of children as combatants. The fact that human rights abuses continue to be committed with impunity despite the ceasefire has created a general climate of fear and insecurity.

International human rights mechanisms have recently raised concerns about human rights violations in Sri Lanka, including in reports that will be considered by the Human Rights Council during the second session.

The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Sri Lanka from 28 November to 6 December 2005. At the conclusion of his visit, the Special Rapporteur denounced the widespread killings of Tamil and Muslim civilians as well as members of the LTTE and the security forces and called for immediate confidence-building measures to prevent further killings and strengthen the accountability of those responsible.³⁵ The Special Rapporteur described extrajudicial executions as a singularly important element in the exacerbation of the conflict, noting that many Tamil and Muslim civilians have been killed primarily because they have sought to exercise their freedoms of expression, movement, association, and participation in ways that are not supportive of one or another of the fighting factions. He concluded that almost none of these extrajudicial executions had been effectively investigated and that continued impunity would “inevitably fuel the cycle of bitterness, retaliation and violence.” Among his principal recommendations is the conclusion of a wide-ranging human rights agreement, including the establishment of an effective international human rights monitoring mechanism.³⁶

The Special Rapporteur on freedom of religion or belief, who visited Sri Lanka on 2 - 12 May 2005, has expressed concern at reports of violent acts of religious intolerance, including the destruction or burning of places of worship, and that in most cases the perpetrators have not been brought to justice.³⁷ She noted that while the government generally respects freedom of religion or belief, the recent deterioration of religious tolerance and the absence of appropriate action by the government have brought respect for freedom of religion or belief to an unsatisfactory level. She further noted that while the acts that have led to violations of the right to freedom of religion or belief are usually committed by non-state actors, the government must fulfil its obligations, including by ensuring the prompt investigation of any act of religious violence or intolerance, the prosecution of all perpetrators and the awarding of compensation to the victims of these violations.³⁸

³⁵ UN press release issued on 6 December 2005.

³⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of his mission to Sri Lanka, (E/CN.4/2006/53/Add.5), 27 March 2006.

³⁷ UN press release issued on 12 May 2005.

³⁸ Report of the Special Rapporteur on freedom of religion or belief of her mission to Sri Lanka, (E/CN.4/2006/5/Add.3), 12 December 2005.

The Committee against Torture considered the second periodic report of Sri Lanka on 10-11 November 2005 and made a number of recommendations for action by the government.³⁹ These included a call to strengthen the Human Rights Commission of Sri Lanka to enable it to function effectively and ensure that its recommendations are fully implemented, and recommendations that effective measures be taken to ensure that fundamental legal safeguards for persons detained are respected, including the right to habeas corpus, and the rights to inform a relative and access to a lawyer and a doctor of their own choice. The Committee further called on the government to ensure prompt, impartial and exhaustive investigations, by an independent body, into all allegations of torture and ill-treatment, including sexual violence, and disappearances committed by law enforcement officials. Finally it urged the government to allow independent human rights monitors, including the Human Rights Commission of Sri Lanka, full access to all places of detention, including police barracks, without prior notice.

Impunity for human rights violations and abuses in Sri Lanka remains endemic in part due to weaknesses within the police and the judiciary, but also owing to a lack of political will. Amnesty International welcomes the announcement by the President of Sri Lanka, on 4 September, that the government will establish an independent commission to probe abductions, “disappearances” and extra-judicial killings in all areas of the country. A truly independent international commission of inquiry would be an essential step towards ending impunity in Sri Lanka. Its mandate should allow it to investigate all allegations of serious violations, including unlawful killings, abductions, and enforced disappearances whether committed by government forces, the LTTE, the Karuna Group or other armed groups or individuals acting on their behalf. The mandate should also call upon the commission to make recommendations for the protection of the civilian population through measures to prevent future human rights violations and to respond to such violations as take place.

Amnesty International recommends that:

- the Council take urgent measures to protect civilians by supporting the establishment of an international human rights monitoring mechanism, throughout the country, mandated to respond to the deteriorating human rights situation and to contribute to the prevention of further serious violations of the human rights before the situation deteriorates into a full-blown human rights emergency;
- the Council support prompt and effective action to address the long-standing issue of impunity for violations and abuses of human rights and humanitarian law, including the establishment of an independent international commission of inquiry to carry out investigations into serious violations of international human rights and humanitarian law and to make recommendations to protect the civilian population through measures to prevent such violations and abuses from recurring;

³⁹ Conclusion and recommendations of the Committee against Torture (CAT/C/LKA/CO.2), 15 December 2005.

- the Council encourage the government to ensure the independent and effective functioning of the Human Rights Commission of Sri Lanka, including by ensuring that appointments to the Commission fully accord with the Paris Principles;
- the Council urge the government and the LTTE to ensure full and effective protection of the human rights of internally displaced persons in all areas of the country, including by urging the government and the LTTE to guarantee safe and unhindered access for humanitarian agencies.

Slovenia – the “erased” continue to be denied their human rights

“Decides 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 fair and equal manner.”

General Assembly resolution 60/251, Operative paragraph 2

In 1992 some 18,305 individuals were unlawfully removed from the Slovenian registry of permanent residents. They were mainly people from other former Yugoslav republics, who had been living in Slovenia but had not acquired Slovenian citizenship after Slovenia became independent. More than 14 years later many of the “erased” remain without a legally regulated status, and Slovenia has yet to meet its obligations under international human rights law, including regarding the right to education, health, work, and social security.

Since their “erasure”, some 12,000 people have been able to obtain Slovenian citizenship or permanent residency, often after years of bureaucratic and legal struggle. However, many still suffer from the consequences of having been “erased” and have not been granted full reparation. Another 6,000 remain without Slovenian citizenship or a permanent residence permit. Many of them live there illegally as foreigners or as stateless persons, while others have been forced to leave the country as a result of their “erasure”. Others live legally in Slovenia as temporary residents.

Who are the “erased”?

Before its dissolution, citizens of the Socialist Federal Republic of Yugoslavia (SFRY) were not only citizens of the SFRY, but also of one of the constituent republics. Such republican citizenship did not have any practical significance before the breakup of the country. SFRY citizens of other republics living in Slovenia enjoyed the same rights as those who also had Slovenian citizenship. When Slovenia became independent, citizens of other republics residing in Slovenia could apply for Slovenian citizenship by December 1991. However, pursuant to provisions of the *Foreign Citizens Act* (introduced in order to regulate the status of foreigners in Slovenia), on 26 February 1992 at least 18,305 individuals were removed from the Slovenian registry of permanent residents and their records transferred to the registry of foreigners.

Those affected were not informed of the “erasure” or its consequences, as a result of which they became *de facto* foreigners or stateless persons residing illegally in Slovenia. The “erasure” was in some cases followed by the physical destruction of the identity documents of the individuals concerned, and some of the “erased” were served with forcible removal orders and had to leave the country. Some of the “erased” had been born in Slovenia but had remained SFRY citizens of other Yugoslav republics. Others had moved to Slovenia from other parts of Yugoslavia before the country’s dissolution. They are mostly of non-Slovene or mixed ethnicity and include a significant number of members of Romani communities.

Wide-ranging violations of human rights result from the “erasure”

In 1999, the Slovenian Constitutional Court recognized the unlawfulness of the “erasure”,⁴⁰ and in a further decision in 2003, the Court ruled that permanent residence permits should be issued with retroactive effect from the date of the “erasure”.⁴¹ The ongoing failure to regulate the status of the “erased” have disproportionately affected Roma, non-ethnic Slovenes and other marginalized people. Amnesty International considers that their “erasure” violates the principle of non-discrimination as well as a wide range of human rights as detailed below.

Treated as “foreigners” with no permanent residence permit in Slovenia, the “erased” have had limited or no access to comprehensive healthcare since 1992. This is a violation of their right to the highest attainable standard of physical and mental health,⁴² and in some cases this has had serious consequences for the health of individuals.

Some of the “erased” children lost access to secondary education as a result of being considered foreigners with no permanent residence permit. The “erasure” thus led to violations of the right to education.⁴³

Many of the “erased” lost their job or could no longer be legally employed as a consequence of their status as foreigners or stateless persons without permanent residency permits. This amounts to violations of the rights to work and social security despite Slovenia’s obligations to recognize the right to work and to take steps to achieve its full realization.⁴⁴ With the loss of employment, many also lost many years of pension contributions. Many of the “erased” have been unable to find a job because they do not have the necessary official documents, or because they are considered as foreigners with no right to work. Hence they are forced to work in the “informal sector” with low salaries and no social protection – or face a situation of extreme poverty.

⁴⁰ Constitutional Court of the Republic of Slovenia, *Decision in case no. U-I-284/94*, 4 February 1999.

⁴¹ Constitutional Court of the Republic of Slovenia, *Decision in case no. U-I-246/02*, 3 April 2003.

⁴² The right to the highest attainable standard of physical and mental health is guaranteed in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which Slovenia ratified on 6 July 1992.

⁴³ The right to education is guaranteed in Article 13 of the ICESCR.

⁴⁴ The rights to work and social security are guaranteed in Articles 6 and 9 in the ICESCR.

These serious human rights violations give rise to an obligation on Slovenia to provide reparation to the victims, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

A number of international human rights mechanisms have raised Slovenia's failure to uphold its obligations under international human rights law with regard to the "erased":

In a report on his visit to Slovenia in 2003, the Council of Europe's Commissioner for Human Rights recommended that the Slovenian authorities "ensure that the situation of the persons erased from the list of permanent residents be regularised without delay in the manner prescribed by the Constitutional Court."⁴⁵

In July 2005 the UN Human Rights Committee, after examining Slovenia's second periodic report, acknowledged efforts made by Slovenia, but expressed concern about "the situation of those persons who have not yet been able to regularize their situation in the State party" and called on the authorities to "seek to resolve the legal status of all the citizens of the successor States that formed part of the former Socialist Federal Republic of Yugoslavia who are presently living in Slovenia" and to "facilitate the acquisition of Slovenian citizenship by all such persons who wish to become citizens of the Republic of Slovenia".⁴⁶

Similarly, in its concluding observations issued following the examination of Slovenia's initial periodic report in November 2005, the Committee on Economic, Social and Cultural Rights noted its concern that former SFRY nationals have been "erased", observing that "this situation entails violations of these persons' economic and social rights, including the rights to work, social security, health care and education". The Committee called on the authorities to "take the necessary legislative and other measures to remedy the situation of nationals of the States of former Yugoslavia who have been "erased" as their names were removed from the population registers in 1992. While noting that bilateral agreements were concluded in this regard, the Committee strongly recommends that the State party should restore the status of permanent resident to all the individuals concerned, in accordance with the relevant decisions of the Constitutional Court. These measures should allow these individuals to reclaim their rights and regain access to health services, social security, education and employment. The Committee requests the State party to report to it, in its next periodic report, on progress in this regard."⁴⁷

⁴⁵ Council of Europe: Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on His Visit to Slovenia, 11-14 May 2003, (CommDH(2003)11), 15 October 2003, Paragraph 28.

⁴⁶ *Concluding Observations of the Human Rights Committee: Slovenia*, CCPR/CO/84/SVN, 25 July 2005, Paragraph 10.

⁴⁷ *Concluding observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/SVN/CO/1, 25 January 2006, paragraph 16.

In March 2006, Amnesty International brought its concerns about the situation of the “erased” in Slovenia to the attention of a number of the Special Procedures, including the Independent Expert on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the right to education.

Amnesty International recommends that the Human Rights Council encourage the government of Slovenia to:

- publicly recognize the discriminatory nature of the “erasure”;
- establish an independent commission of inquiry to investigate the human rights consequences of the “erasure” for the individuals concerned;
- adopt legislative and other measures granting full reparation, including compensation, to all individuals whose human rights were violated by the “erasure”;
- comply with the recommendations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, as well as the decisions of the Constitutional Court, by retroactively restoring the status of permanent residents of all individuals “erased” in 1992 and granting them access to all public healthcare and educational programmes, on equal terms with permanent residents.

Amnesty International further recommends that:

- the Special Procedures address the situation of the “erased” in future reports to the Council.

Israel and the Occupied Territories and Lebanon -- continued need to investigate violations of international human rights and humanitarian law

“Decides that the Council will [...] respond promptly to human rights emergencies”

General Assembly Resolution 60/251, Operative Paragraph 5 (f)

While 2005 had seen a significant reduction in violence between Israelis and Palestinians,⁴⁸ 2006 saw a dramatic increase in killings of Palestinians by Israeli forces.

⁴⁸ Although killings by both sides had continued: in 2005, some 190 Palestinians, including 50 children, were killed by the Israeli army in the Occupied Territories and 41 Israeli civilians, including six children were killed by Palestinian armed groups.

The situation has further deteriorated since the Israeli army launched a military campaign (operation “summer rain”) at the end of June, following the capture of an Israeli soldier by Palestinian armed groups. Since then killings of Palestinians by Israeli forces have escalated and an almost continuous siege has been imposed on Gaza, causing a further deterioration of the already dire humanitarian situation.

At the same time, a month-long conflict erupted in Lebanon between Israeli forces and Hizbullah, in the wake of the capture of two Israeli soldiers by Hizbullah. Israeli attacks killed approximately 1,000 Lebanese civilians and destroyed tens of thousands of homes and significant parts of Lebanon’s infrastructure, while Hizbullah rockets killed approximately 40 Israeli civilians and damaged hundreds of homes and other properties in northern Israel. In addition, unexploded Israeli cluster bombs continue to kill and wound civilians in south Lebanon.

UN Security Council resolution 1701⁴⁹ brought about a ceasefire and provided for the deployment of a reinforced UN peacekeeping mission in south Lebanon aimed at consolidating the ceasefire.

Human rights violations during the Israel-Lebanon conflict

During more than four weeks Israeli forces launched daily aerial bombardments and heavy artillery shelling throughout Lebanon. The Israeli air force launched more than 7,000 attacks on targets in Lebanon while the navy conducted an additional 2,500 artillery strikes, and thousands more artillery shells were fired by ground troops.

Approximately 1,000 Lebanese civilians, a third of them children, were killed and more than 4,000 were injured. Entire families perished in air strikes on their homes or in their vehicles while fleeing the aerial assaults on their villages. Scores lay buried beneath the rubble of their houses for weeks, as the Lebanese Red Cross and other rescue workers were prevented from accessing the areas by continuing Israeli strikes.

Civilian infrastructure throughout the country suffered an unprecedented level of destruction. Israeli forces pounded thousands of buildings into the ground, reducing entire neighbourhoods to rubble and turning villages and towns into ghost towns, as their inhabitants fled the bombardments. Main roads, bridges, electricity networks, water facilities, fuel depots and factories were attacked and destroyed. The Lebanese government estimates that 31 “vital points”, such as airports, seaports, water and sewage treatment plants, and electrical facilities,

⁴⁹ Security Council resolution 1701 was adopted on 11 August 2006.

were completely or partially destroyed, as have around 80 bridges and 94 roads. The number of residential properties, offices and shops completely destroyed exceeds 30,000. Close to a million people, amounting to a quarter of the entire Lebanese population, were forced to flee their villages and tens of thousands of them now have no homes to return to because they were destroyed in Israeli attacks.

Hundreds of thousands of unexploded cluster bombs launched by Israeli forces in the final days of the war, mostly after the ceasefire had been agreed, now litter the villages of south Lebanon - hampering aid and reconstruction efforts and preventing a resumption of normal life for the local population. The clear-up of this unexploded ordnance is estimated to take years and has been impeded to date by Israel's failure to provide detailed maps showing the areas which its forces targeted with cluster bombs.

During the month long conflict, Hizbullah fired nearly 4,000 rockets into northern Israel, killing approximately 40 civilians, seriously injuring dozens of others, damaging thousands of houses and other buildings.

The rockets used by Hizbullah, mostly Katyusha-type rockets, cannot be directed at specific targets and are thus indiscriminate in nature. Some 10 percent of the rockets fired by Hizbullah in this conflict were packed with thousands of metal ball bearings, intended to maximize harm to people, and around a quarter of the rockets launched fell into urban areas. Hundreds of thousands of inhabitants of northern Israel were forced to take refuge in shelters or to flee to other parts of the country.

Deterioration of the human rights situation in the Occupied Palestinian Territories

The human rights and humanitarian situation in the Occupied Palestinian Territories has sharply deteriorated in 2006, and even more so in recent months. The Israeli army has launched thousands of artillery shells and air strikes against densely populated areas in the Gaza Strip, killing more than 430 Palestinians, including more than 80 children, and injuring hundreds of others since the beginning of this year.

In the same period, Palestinian armed groups have killed 15 Israeli civilians and five soldiers and have launched hundreds of 'qassam' rockets into southern Israel, injuring 14 Israeli civilians.

Most recently, following the capture by Palestinian armed groups of an Israeli soldier at the end of June, Israeli attacks have intensified, causing the deaths of some 250 Palestinians, including more than 40 children, mostly in Gaza, and Israeli forces have launched frequent air strikes against electricity and water supply systems, roads and other civilian infrastructure, educational and other public institutions, and private property in the Gaza Strip.

Further restrictions have been imposed by Israel on the movement of people and goods within and between the Occupied Territories. The West Bank has effectively been

sectioned into several cantons between which Palestinians are not permitted to move freely, and the Gaza Strip has been subjected to an almost continuous blockade, preventing any semblance of normal life for both persons and businesses.

These restrictions, together with the withholding by Israel of the tax it collects on behalf of the Palestinian Authority (PA), the imposition of economic sanctions and the suspension of aid by key donors to the PA, have caused an unprecedented level of economic hardship, with growing numbers of people now living below the poverty line and totally dependent on food assistance. The situation is particularly critical in the Gaza Strip, which has been subjected to sustained and far-reaching Israeli attacks and blockades and has experienced a growing level of lawlessness and intra-Palestinian violence.

Amnesty International recommends that:

- the Council correct the one-sidedness of the resolution S-2/1, adopted at the Second Special Session on 11 August 2006, and include in the mandate of the current commission of inquiry investigation into violations of international human rights and humanitarian law by both sides to the conflict, including Hizbullah. In particular, the inquiry should examine the impact of the conflict on the civilian population and should propose effective measures to hold accountable those responsible for crimes under international law, and to ensure that the victims receive full reparation.
- the Council support the establishment of a team of authoritative international experts to be deployed to Israel and the Occupied Territories, with a mandate to carry out an independent and thorough investigation into the growing number of killings of Palestinians by Israeli forces in the Gaza Strip, as well as into the launching of 'qassam' rockets by Palestinian armed groups from Gaza into southern Israel. All parties -- Israelis and Palestinians -- should cooperate fully and grant the experts unimpeded access to people, places and documents. The findings of such investigation should be reported to the Human Rights Council and be accompanied by recommendations for measures to be taken by all to protect civilian lives.

6. Outcome of the Second Session of the Human Rights Council

“Decides that the methods of work of the Council shall [...] be result-oriented, allow subsequent follow-up discussion to recommendations and their implementation”

General Assembly Resolution 60/251, Operative Paragraph 12

As stated earlier, the second session of the Council will spend a considerable proportion of its time on constitutional and procedural issues as stipulated in resolution 60/251, as well as on issues inherited from the Commission on Human Rights. Amnesty International looks forward to significant progress on these issues. The organization also expects the Council to demonstrate that it can protect human rights while it builds itself as an institution. The Council’s ability to take concrete measures in specific situations will be an important measure of the progress of the Council towards providing the United Nations with a more effective human rights body. It will also be a measure of the credibility of the Council members in their professed commitment to enhanced promotion and protection of human rights.