

## THE UNITED NATIONS HUMAN RIGHTS SYSTEM

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### A. MAIN UN HUMAN RIGHTS INSTRUMENTS

- UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Declaration was proclaimed by the UN General Assembly on 10 December 1948, General Assembly resolution 217 A (III).

<http://www.un.org/en/documents/udhr/index.shtml>

- INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966) (Resolution of General Assembly 1100A (XXI) of 16 December 1966, entered into force 23 March 1976)

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966) (Resolution of General Assembly 2200A (XXI) of 16 December 1966, entered into force 23 March 1976)

Monitoring body: *HUMAN RIGHTS COMMITTEE*

<http://www2.ohchr.org/english/bodies/hrc/index.htm>

- INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966) (Resolution of General Assembly 2200A (XXI) of 16 December 1966, entered into force 3 January 1976)

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Resolution of General Assembly 63/1172200A (XXI) of 10 December 2008)

Monitoring body: *COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

<http://www2.ohchr.org/english/bodies/cescr/index.htm>

- CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979) (Resolution of General Assembly 34/180 of 18 December 1979, entered into force 3 September 1981)

OPTIONAL PROTOCOL TO THE CONVENTION ON THE  
ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST  
WOMEN

(Resolution of General Assembly 54/4 of 15 October 1999, entered into force 22 December 2000)

Monitoring body: *COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN*

<http://www.un.org/womenwatch/daw/cedaw/committee.htm>

- CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1984) (Resolution of General Assembly 39/46 of 10 December 1984, entered into force 26 June 1987)

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (2002) (Resolution of General Assembly 57/199 of 18 December 2002, entered into force 22 June 2006)

Monitoring body: *COMMITTEE AGAINST TORTURE*

<http://www2.ohchr.org/english/bodies/cat/index.htm>

- INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE (2006) (Resolution of General Assembly 61/177 of 20 December 2006, entered into force 23 December 2010)

Monitoring Body: *THE COMMITTEE ON ENFORCED DISAPPEARANCES*

<http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>

(The Committee members will be elected in 2011)

<http://treaties.un.org/>

## B. KEY TREATY PROVISIONS

### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

#### *Article 2*

1. Each State Party to the present Covenant **undertakes to respect and to ensure to all individuals** within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to

adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of **judicial remedy**;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### **Article 6**

1. Every human being has the inherent **right to life**. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

...

#### **Article 7**

No one shall be subjected to **torture** or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### **Article 9**

1. Everyone has the right to **liberty and security** of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

...

#### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be **entitled to a fair and public hearing** by a competent, independent and impartial tribunal established by law. ...

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to **freedom of expression**; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

## OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

### *Article 4*

...

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the **remedy**, if any, that may have been taken by that State.

### C. OTHER RELEVANT INSTRUMENTS

- *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (adopted by General Assembly resolution 40/34 of 29 November 1985)

<http://www2.ohchr.org/english/law/pdf/victims.pdf>

It includes a useful definition of a 'victim':

#### A. Victims of crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

- *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (recommended by Economic and Social Council resolution 1989/65 of 24 May 1989)

<http://www2.ohchr.org/english/law/pdf/executions.pdf>

It includes useful standards and practices on 'prevention' and 'investigation':

#### Prevention

1. Governments shall **prohibit by law** all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and **are punishable** by appropriate penalties which take into account the seriousness of such offences.

**Exceptional circumstances** including a state of **war** or threat of war, internal political instability **or any other public emergency** may not be invoked as a justification of such executions. **Such executions shall not be carried out under any circumstances** including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an

official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

....

4. **Effective protection** through judicial or other means shall be guaranteed to **individuals and groups who are in danger** of extra-legal, arbitrary or summary executions, including those who receive death threats.

#### Investigation

9. There shall be **thorough, prompt and impartial** investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The **purpose** of the investigation shall be **to determine the cause, manner and time of death, the person responsible, and any pattern or practice** which may have brought about that death. It shall include an **adequate autopsy, collection and analysis of all physical and documentary evidence** and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The **investigative authority** shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority **to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness.** To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of **expertise or impartiality**, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an **independent** commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate **autopsy** is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those **conducting the autopsy** for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall

be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. **Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats** of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. **Families of the deceased** and their legal representatives shall be informed of, and **have access to any hearing** as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made **within a reasonable period of time** on the methods and findings of such investigations. The **report shall be made public** immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

...

- *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Recommended by General Assembly resolution 55/89 of 4 December 2000)

<http://www2.ohchr.org/english/law/investigation.htm>

Standards of investigation are highlighted:

2. States shall ensure that complaints and reports of torture or ill-treatment are **promptly and effectively investigated**. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be **independent** of the suspected perpetrators and the agency they serve, shall be **competent and impartial**. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the **findings shall be made public**.

...

- ***Question of the impunity of perpetrators of violations of human rights (civil and political): final report prepared by Mr. L. Joinet, pursuant to Subcommission decision 1996/119)*** E/CN.4/Sub.2/1997/20, 26 June 1997.

Submitted by the Sub-commission on Prevention of Discrimination and Protection of Minorities [Renamed as the Subcommission on the Promotion and Protection], Forty-ninth session, Revised final report prepared by Mr. L. Joinet, pursuant to Subcommission decision 1996/119), E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.

This report is a comprehensive document about the issue of impunity of perpetrators of violations of human rights. It gathers together and revises all previous work that has been done on the subject in the last six years.

Its main approach is to define rights which, as the rights of victims, constitute the basis for combating impunity, namely: the right to know, the right to justice and the right to reparation. These three headings of rights form the basis of part 2 (Annex II) of the report that lays down ‘*Set of principles for the protection and promotion of human rights through action to combat impunity*’

One of the main considerations specified in its preamble is ‘that the duty of every State under international law to respect and to secure respect for human rights requires that effective measures should be taken to combat impunity’. This leads to the belief that ‘national and international measures must be taken for that purpose with a view to securing jointly, in the interests of the victims of human rights violations, observance of the right to know, the right to justice and the right to reparation, without which there can be no effective remedy against the pernicious effects of impunity’.

**Definitions:**

“‘Impunity” means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to them being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to the victims.’<sup>1</sup>

See also Principle 18. Duties of states with regard to the administration of justice:

‘Impunity arise from a failure of States to meet their obligations to investigate violations, take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that they are prosecuted, tried and duly punished, to provide victims with effective remedies and reparation for the injuries suffered, and to take steps to prevent any recurrence of such violations.

Although the decision to prosecute is primarily within the competence of the State, supplementary procedural rules should be introduced to enable victims to institute proceedings on either an individual or collective basis, where the authorities fail to do so, particularly as civil plaintiffs. This option should be extended to non-governmental organizations with long-standing activities on behalf of the victims concerned.’

The report details various principles and standards of practice that are discussed under the main headings of rights (the right to know, the right to justice and the right to reparation) that form the base of this report.

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<sup>1</sup> Page 16 (emphasis in the original).

It covers such issues as access to information, standards of investigation and the institutional administrative mechanism that is presupposed, including the distribution of jurisdiction between national, foreign and international courts. In this respect, it discusses several general principles and then deals with the assignment of jurisdictions to national courts, foreign courts and international courts, paying particular attention to the importance of norms of universal jurisdiction.

In particular, the **right to justice** is approached in connection to ‘**the right to a fair and effective remedy**’, for which the reports explains that:

Para. 26: ‘This implies that all victims shall have the opportunity to assert their rights and receive a fair and effective remedy, ensuring that their oppressors stands trial and that they obtain reparations. ...there can be no just and lasting reconciliation without an effective response to the need for justice; as a factor in reconciliation, forgiveness, insofar as it is a private act, implies that the victim must know the perpetrator of the violations and that the latter has been able to show repentance. For forgiveness to be granted, it must first have been sought.’

Para. 27: ‘The right to justice entails obligations for the State: to **investigate** violations, to prosecute the perpetrators and, if their guilt is established, to punish them. Although the decision to prosecute is initially a State responsibility, supplementary procedural rules should allow victims to be admitted as civil plaintiffs in criminal proceedings or, if the public authorities fail to do so, to institute proceedings themselves.’

The report also covers restrictive measures whose operation run counter to available actions that combat impunity. These relate to prescription, amnesty, the right of asylum, extradition, exclusion of the in absentia procedure, due obedience, the irremovability of judges, and military courts. Of particular importance is also the section that is devoted to guaranteed of non-repetition.

NB: Some of the measures and principles listed are made with reference to ‘serious crimes under international law’, whose definition is given in the introductory sections of the report.<sup>2</sup>

## **D. UN ORGANS WITH HUMAN RIGHTS COMPETENCES**

### **1. THE OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS**

The High Commissioner through the Office of the UN High Commissioner for Human Rights fulfils an extensive mandate for the promotion and protection of human rights. It liaises with various UN bodies and provides technical and advisory assistance to states. In essence, OHCHR works to offer the best expertise and substantive and secretariat support to the various UN human rights mechanisms as they execute their standard-setting and monitoring duties.

Activities include:

- ✓ Recommendations to the competent UN bodies for improving promotion and protection of all human rights.

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<sup>2</sup> The definition of ‘serious crimes under international law’ is given on page 16 of the report: ‘This term, as used in these principles, covers war crimes, crimes against humanity and grave breaches of and crimes against international humanitarian law.’

- ✓ Supporting the work of the work of the special procedures— independent individuals or expert groups appointed by the Human Rights Council to study and monitor human rights in different countries or in relation to specific issues.
- ✓ Collaborating with governments and civil society groups in areas such as administration of justice, legislative reform, human rights treaty ratification, and human rights education.

### **Relevant publications:**

- *Rule-of-Law Tools for Post-Conflict States: Mapping the justice sector* (Office of the UN High Commissioner for Human Rights, HR/PUB/06/2, Geneva 2006)

<http://www.ohchr.org/Documents/Publications/RuleoflawMappingen.pdf>

It gives an overview of the basic institutions, entities and mechanisms and identifies priorities such as linkages between core institutions and the utility of oversight bodies. It is part of the OHCHR's policy development in transitional justice.

It appends also 'Specific guidelines for investigating allegations of cruel, inhuman or degrading treatment inflicted by police or while in detention'

- *Rule-of-Law Tools for Post-Conflict States: Monitoring legal systems* (Office of the UN High Commissioner for Human Rights, HR/PUB/06/3, Geneva 2006)

<http://www.ohchr.org/Documents/Publications/RuleoflawMonitoringen.pdf>

This publication aims to provide a methodology for human rights monitoring of the justice system drawing on principles, techniques and approaches that have been used from UN, OSCE, and NGO monitoring programmes.

- *Rule-of-Law Tools for Post-Conflict States: Prosecution initiatives* (Office of the UN High Commissioner for Human Rights, HR/PUB/06/4, Geneva 2006)

<http://www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf>

It addresses various issues that concern the prosecution of serious human rights abuses (i.e. post-conflict initiatives) including the capacity and technical ability that is required in order to investigate and prosecute serious crimes (e.g. crimes against humanity, war crimes).

## **2. THE HUMAN RIGHTS COUNCIL**

<http://www2.ohchr.org/english/bodies/hrcouncil/>

The Human Rights Council is composed of 47 Member States and is a key UN intergovernmental body responsible for human rights. The Council addresses violations, serves as an international forum for human rights dialogue, reviews States'

human rights records, responds to emergencies, works to prevent human rights abuses, and submits recommendations to the General Assembly for the development of international human rights law.

The Council replaced the UN Commission on Human Rights which ceased to exist in 2006. As well as assuming the mandates and responsibilities previously held by the Commission, the Council, which reports directly to the General Assembly, is also charged with making recommendations to the UN General Assembly to develop international human rights law and undertaking a *Universal Periodic Review* (i.e. a state reporting mechanism) of each State's adherence to its human rights obligations and commitments. The Council adopts a final outcome report which contains recommendations and serves as a basis for the next review of the state.

A *complaint procedure* is also provided to deal with issues that concern 'consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstance'.<sup>3</sup> However, the Council has so far taken action but on very few communications under this procedure.

In its work, the Council is assisted by the *Human Rights Council Advisory Committee* which replaces the former Sub-Commission on the Promotion and Protection of Human Rights, but unlike that body, the HRC Advisory Committee does not adopt resolutions or decisions. It provides valuable expertise by undertaking studies and research on various issues that concern the Council's work. For this purpose, the Advisory Committee liaise also with other UN agencies, intergovernmental organisations, civil society stakeholders, states and national human rights institutions.

<http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm>

The Council supervises and further develops the Special Procedures mechanisms developed initially by the former Commission on Human Rights. These mechanisms are organised and carried out by Independent Experts who work individually or as working groups to address thematic issues or country-specific situations. For our purposes, the most relevant mechanisms are:

(a) Special rapporteur on the promotion and protection of the right to freedom of opinion and expression

(b) Special rapporteur on the situation of human rights defenders

***(a) SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION***

<http://www2.ohchr.org/english/issues/opinion/index.htm>

It gathers information on violations of the right to freedom of expression including issues of threats, violence, harassment against persons seeking to exercise the right to freedom of expression; seeks, receives and responds to Governments, NGOs, and any other parties regarding these issues; provides recommendations and

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<sup>3</sup> Human Rights Council Resolution 5/1, A/HRC/RES/5/1 (18 June 2007), para. 85.

suggestions including technical assistance; undertakes fact-finding country visits (no many visits though); sends urgent appeals and letters to members states on alleged violations which are summarised in its annual report submitted to the Human Rights Council.

On its website ('Individual Complaints' section), it specifies that the Special Rapporteur is particularly interested in receiving information on problems and violation related inter alia to

'(a) Detention of, discrimination against, or threats or use of violence and harassment, including persecution and intimidation, directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including professionals in the field of information;

...

(e) Activities of human rights defenders (e.g. lawyers, community activists);'

### Recent annual reports:

<http://www2.ohchr.org/english/issues/opinion/annual.htm>

- *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (A/HRC/14/23, 20 April 2010)*

The Recommendations (last section of the report) include sub-section '3. Protection of journalists and freedom of the press' that states:

132. It is recommended that States take all actions necessary to ensure that representatives of the national and international press have access to all facts and to all places, including zones of internal or international armed conflict, while guaranteeing the protection necessary to safeguard their lives and their physical and mental integrity, together with the full exercise of their human rights in accordance with international human rights law and international humanitarian law.

133. With regard to the alarming number of journalists who have been killed, kidnapped or threatened, States are reminded of their duty to investigate and prosecute those responsible for planning and perpetrating such acts in order to eliminate the culture of impunity that perpetuates violence.

- *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Addendum: Tenth anniversary joint declaration: Ten key challenges to freedom of expression in the next decade (A/HRC/14/23/Add.2, 25 March 2010)*

See section '3. Violence against journalists'

Violence against journalists remains a very serious threat with more politically motivated killings of journalists in 2009 than in any other year in the past decade.

**Particularly at risk are journalists reporting on** social problems, including organized crime or drug trafficking, voicing criticism of government or the powerful, reporting on human rights violations or corruption, or reporting from conflict zones.

Recognizing that impunity generates more violence, we are particularly concerned about:

(a) A failure to allocate sufficient attention and resources to preventing such attacks and to investigating them and bringing those responsible to justice when they do occur;

(b) The lack of recognition that special measures are needed to address these attacks, which represent not only an attack on the victim but also an attack on everyone's right to receive information and ideas;

(c) The absence of measures of protection for journalists who have been displaced by such attacks.

- *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*

*Addendum: Summary of cases transmitted to Governments and replies received (A/HRC/14/23/Add.1, 1 June 2010)*

E.g. para. 84: Urgent appeal to the Government of Azerbaijan concerning Mr Adnan Hazizade (a prominent video-blogger and coordinator of the OL Youth Organisation) and Mr Emin "Milli" Abdullayev (co-founder and coordinator of the Alumnin Network (AN) Youth Organisation and head of ANTV Online) who were attacked by identifiable individuals and were arrested by the police when they filed a complaint against their aggressors. Their assailants were not arrested.

- *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development – Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, Frank La Rue (A/HRC/11/4, 30 April 2009)*

The report addresses also the issue of journalists' safety. In particular,

Para 43: The protection of journalists engaged in dangerous missions during an armed conflict is a major concern for the international community and in the last year remained a key obstacle for achieving the full implementation of the right to freedom of opinion and expression. In 2008, a total of 60 journalists were killed, some 29 media professionals were kidnapped and 929 were physically attacked or threatened throughout the year.[footnote 5]

Comment: This information has been supplied by a private organisation, as footnote 5 reads: Reporters Without Borders, *Press Freedom Round-up*; see [www.rsf.org/article.php3?id\\_article=24909](http://www.rsf.org/article.php3?id_article=24909).

In section B of its 'Conclusions and Recommendations' that is entitled 'B. Safety and protection of media professionals', the report mentions inter alia that:

64. The Special Rapporteur reiterates the recommendations of his predecessors that Governments should translate their formal concerns about the **safety of journalists**, elaborated in international forums and treaty law, into concrete measures for enhancing the safety of journalists and other media personnel including at the legislative, administrative and judicial levels. Measures should be taken to protect all media personnel regardless of their professional and political affiliation. The protection of journalists and media workers must be ensured at all times, particularly during armed conflicts, states of emergency and public disorder and electoral processes. Governments are also urged to ensure the protection of other groups at risk, such as **trade unionists, social workers, students and teachers, writers and artists**.

65. Creating a culture of safety for journalism adds to the capacity of media to contribute to building prosperous and confident democracies. The Special Rapporteur urges Governments and State institutions to provide support and an assurance that all acts of **violence** against journalists are **fully investigated**. Limiting **impunity** for the perpetrators of crimes against media professionals will function as an important **deterrent** against the repetition of these crimes.

...

67. The Council may wish to consider the opportunity, as previously suggested by his predecessor, of entrusting the Special Rapporteur with the **preparation of a study on the causes of violence** against media professionals, based, inter alia, on information from and the experiences of Governments, intergovernmental and non-governmental organizations, and **including a comprehensive set of conclusions and recommendations and the drafting of guidelines for the protection of journalists and other media professionals**. This study could represent the first step towards a debate, within the Human Rights Council, on this crucial issue, following the discussions held by other bodies, including the Security Council.

- *Resolution 12/16 – Freedom of opinion and expression* (adopted by the Human Rights Council, 12<sup>th</sup> session, A/HRC/RES/12/16, 12 October 2009)

5. *Calls upon* all States:

- (a) To respect and ensure the respect for the rights referred to in paragraph 1 above;
- (b) To take all necessary measures to put an end to violations of these rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented;
- (c) To ensure that victims of violations of the rights referred to in paragraph 1 above have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible in order to combat impunity;

7. *Calls on* all parties to armed conflict to respect international humanitarian law, including their obligations under the Geneva Conventions of 12 August 1949 and, where applicable, the Additional Protocols thereto of 8 June 1977, the provisions of which extend protection to journalists in situations of armed conflict, and to allow, within the framework of applicable rules and procedures, media access and coverage, as appropriate, in situations of international and non-international armed conflict;

13. *Appeals* to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks, as contained in its resolution 7/36, to provide all necessary information requested by him and to consider favourably his requests for visits and for implementing his recommendations;

- *The right to freedom of opinion and expression. Report of the Special Rapporteur, Ambeyi Ligabo* - E/CN.4/2006/55, 30 December 2005, Commission on Human Rights 62 session.

Paras 56-61: Security and Protection of media professionals

- *Promotion and Protection of the right to freedom of opinion and expression – Note by the Secretary-General (transmitting the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted in accordance with Human Rights Council resolution 12/16)* (A/65/284, 11 August 2010)

**(b) SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS**

<http://www2.ohchr.org/english/issues/defenders/index.htm>

Its main role includes to seek, receive, examine and respond to information on the situation of human rights defenders; cooperate with governments and other interested actors on the promotion and effective implementation of its recommendations and the provisions of the Declaration.

The Special Rapporteur undertakes country visits and receives also individual complaints that are taken up with governments. Contact with governments is usually conducted in the form of an urgent appeal or a letter of allegation of a human rights violation, but such appeals are also used where a violation is ongoing or about to occur. In these communications, the Special Rapporteur asks the governments to investigate the alleged events and to provide the results of its investigations and actions.

The activities of the Special Rapporteur are presented in its annual report that is submitted to the Human Rights Council and to the General Assembly.

- *Declaration on Human Rights Defenders*  
(official title: *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*)  
(General Assembly Resolution, A/RES/53/144, 8 March 1999)

It specifies various principles, rights and duties that are based on recognised human rights standards enshrined in other international instruments. E.g. States have a duty to adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms, ...to conduct prompt and impartial investigations of alleged violations of human rights.

### Reports:

<http://www2.ohchr.org/english/issues/defenders/annual.htm>

- *Report of the Special Rapporteur on the situation of human rights defenders*  
(A/HRC/13/22, 30 December 2009)

The report gives information about the activities of the Special Rapporteur and covers various issues, such as institutional developments around the world, trends and challenges, e.g. 'Role of non-State actors and responsibility of the State'

Para. 42: One way to ensure the safety of defenders is to put an end to impunity for non-State entities. The Special Rapporteur would like to reiterate that States bear the primary responsibility for protecting individuals, including defenders, under their jurisdiction, regardless of the status of the alleged perpetrators. In cases involving non-State actors —including private companies and illegal armed groups — it is paramount that prompt and full investigations be conducted and perpetrators brought to justice. Failure by States to prosecute and punish such perpetrators is a clear violation of article 12 of the Declaration on Human Rights Defenders. Addressing the issue of impunity is a key step to ensuring a safe environment for defenders.

- *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, addendum: Mission to Armenia - Human Rights Council, Sixteenth session, 23 December 2010, A/HRC/16/44/Add.2*

The report notes that human rights defenders are regularly depicted in a distorted manner in State-controlled media and labelled as foreign agents, spies, cronies and the “fifth column”.<sup>4</sup> Following the 2008 Presidential elections certain human rights defenders have experienced direct violence and assaults, but in the majority of the cases harassment and intimidation are effectuated by more subtle and sophisticated methods, such as stigmatization by the media and certain politicians; smear campaigns; intrusive tax inspections; threatening phone calls; and pressure on donors.<sup>5</sup>

During her mission the Special Rapporteur was informed by various media representatives that freedom of expression is nominally respected in Armenia, as evidenced by reports of violence and attacks against journalists, and the overall impression of a climate of self-censorship, particularly concerning sensitive issues, given the lack of independent news media in the country.<sup>6</sup>

The reports includes information about specific incidents of violence against journalists. E.g. On 24 February 2010, a photojournalist working for the newspaper *Aravot* was on duty at the Office of the Prosecutor was prevented by force from taking photographs. Although this incident was captured on film and posted online, the investigation that followed the incident concluded that the aggressor was the photographer.<sup>7</sup>

The report includes a separate section entitled ‘**E. Impunity for abuses against defenders**’ in which it is explained that ‘the quality of investigations and prosecutions is believed to be sub-standard and needs to be enhanced urgently.’

- *Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani: Addendum: Mission to Nigeria (Commission on Human Rights, Sixty-second session, E/CN.4/2006/95/Add.2, 30 January 2006)*

The report reports various incidents of violence against journalists in which state officials were directly involved. The report includes a separate section entitled ‘Journalists and defenders working on corruption and good governance’, in which specific incidents are highlighted. (paras. 57-63). The issue of impunity is also stressed in the section entitled ‘Lack of response and impunity for abuses’, in which the great number of extrajudicial killings is directly linked to the reluctance or lack of response from the state authorities to investigate reported incident of violence. (paras. 88-91).

- *Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani - Addendum: Mission to Brazil (5-21 December 2005) E/CN.4/2006/95/Add.4, 14 March 2006, Commission on Human Rights, 62 session.*

Section III: Issues of Concern for Human Rights Defenders in Brazil and Preliminary Recommendations

Para. 13: ...The Special Representative notes with the gravest concerns the numerous reports of assassinations and attempts on the lives of defenders in Brazil. In this context, the uncountable number of threats which defenders face and the

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<sup>4</sup> Para. 56.

<sup>5</sup> Para. 57.

<sup>6</sup> Para. 80.

<sup>7</sup> Para. 83.

persisting **high level of impunity for such crimes** result in a climate in which defenders fear for their lives and for those of their relatives.

Para 14: ...The Special Representative notes that much of the violence against defenders is rooted in conflicts over land and environmental protection and is **perpetrated by powerful non-State actors** who, in certain instances, reportedly benefit from the collusion of local State authorities.

- *Report of the Special Rapporteur on the situation of human rights defenders* (A/HRC/10/12, 12 February 2009)

It gives an account of the activities of the office and highlights among other issues the potential of the universal periodic review mechanism of the Human Rights Council in enhancing the protection of human rights defenders.

- *Report submitted by the Special Representative of the Secretary-General on human rights defenders* (A/HRC/7/28, 31 January 2008)

NB: the Special Representative of the Secretary-General was replaced by the Special Rapporteur who took up her functions on 1 May 2008.

In addition to the presentation of the office's activities, this report includes a quantitative and thematic analysis of communications to identify challenges and achievements in the implementation of the Declaration on Human Rights Defenders as well as to address specific implementation gaps.

It also includes some methodological tools for follow-up activities and a schematic list of indicators aimed at assessing the situation of human rights defenders on the ground and a matrix to undertake follow-up visits.

It proposes various network relationships with other similar regional institutional offices and other stakeholders.

It recommends that the situation of human rights defenders be one of the elements to review in the Universal Periodic Review of the Human Rights Council.

Extracts from the proposed 'Indicators on human rights defenders:

*'To assess levels of impunity of human rights violations against defenders*

Number and type of human rights violations against defenders;

Accessibility of remedies available to defenders;

Number, quality (prompt and impartial) and outcome of investigations and prosecutions sanctioning violations against human rights defenders and providing compensation to victims;

Existence, accessibility and effectiveness of independent oversight mechanisms for violations committed by public authorities, including the police.'

- *Human rights defenders* (Report submitted to the General Assembly by the Special Rapporteur on the situation of human rights defenders) (A/65/223, 4 August 2010)

It focuses on the responsibility of non-state actors for human rights violations against human rights defenders. It identifies categories of such actors and the types of violations that they commit. It outlines the state's international law obligations in relation to human rights violations caused by non-state actors.

See also:

- *Report of the Special Rapporteur on the situation of human rights defenders*

Addendum: Summary of cases transmitted to Governments and replies received

(A/HRC/13/22/Add.1, 24 February 2010)

*-Report of the Special Rapporteur on the situation of human rights defenders*  
Addendum: Response to the questionnaire on the security and protection of human rights defenders

(A/HRC/13/22/Add.4, 26 February 2010)

### 3. SECURITY COUNCIL

Its primary responsibility is the maintenance of international peace and security in accordance with the principles and purposes of the United Nations. Among its functions and powers, the SC determines the existence of a threat to the peace or act of aggression and recommends what action should be taken. Under Article 41, the SC may call on Members to apply economic sanctions to stop aggression. The effectiveness of these measures, however, has been questioned given the devastating effect that may have on the life of innocent civilians.

Under Article 25 of the UN Charter, the SC is empowered to adopt resolutions that are binding on all member states of the UN.<sup>8</sup>

*Resolution 1738 (2006):*

In 2006, the SC adopted unanimously Resolution 1738 (2006) calling for more action by member states to protect journalists in armed conflict.

[http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

[http://portal.unesco.org/ci/en//files/24283/11743023411Resolution\\_1738.pdf/Resolution%2B1738.pdf](http://portal.unesco.org/ci/en//files/24283/11743023411Resolution_1738.pdf/Resolution%2B1738.pdf)

### 4. GENERAL ASSEMBLY

<http://www.un.org/en/ga/>

The General Assembly is the UN's main deliberative organ that is composed of all member states. It has a significant role in the process of standard-setting and the codification of international law. Among its functions and powers, the GA receives and considers reports from other UN organs, initiates studies and makes recommendations to promote inter alia the realisation of human rights and freedoms.<sup>9</sup>

The GA is assisted in its work by six Committees, the Third of which is the Social, Humanitarian Cultural Affairs Committee. Of the 64 draft resolutions considered by the Third Committee in the Sixty-fourth session of the GA, more than half were submitted under the human rights agenda alone.

The GA regularly adopts human rights-related instruments,<sup>10</sup> and also those that have previously been adopted by the Human Rights Council. On 1 March 2011,

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<sup>8</sup> UN Charter, Article 25: 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.'

<sup>9</sup> UN Charter, Article 13. 1.b.

<sup>10</sup> In its 55<sup>th</sup> session, it adopts inter alia the United Nations Convention against Transnational Organized Crime, A/55/383, 8 January 2001.

the GA in its 76<sup>th</sup> Plenary meeting decided to suspend Libya's membership in the Human Rights Council, which had urged the suspension in a resolution on its own.<sup>11</sup>

See also:

*Resolution adopted by the General Assembly, 61/176. Situation of human rights in the Islamic Republic of Iran (A/RES/61/176), 1 March 2007*

2. Expresses its serious concern at:

(a) The **continuing harassment, intimidation and persecution** of human rights defenders, non-governmental organizations, political opponents, religious dissenters, political reformists, journalists, parliamentarians, students, clerics, academics, bloggers, union members and labour organizers, including through undue restrictions on the freedoms of assembly, conscience, opinion and expression, the threat and use of arbitrary arrest and prolonged detention, targeted at both individuals and their family members, the ongoing unjustified closure of newspapers and blocking of Internet sites and restrictions on the activities of unions and other non-governmental organizations, as well as the absence of many conditions necessary for free and fair elections;

(b) The persistent **failure to comply fully** with international standards in the administration of justice and, in particular, the absence of due process of law, the refusal to provide fair and public hearings, the denial of the right to counsel and access to counsel by those detained, the use of national security laws to deny human rights, the prevalent atmosphere of impunity for officials who commit human rights abuses, the harassment, intimidation and persecution of defence lawyers and legal defenders, the adulteration of judicial files, the lack of respect for internationally recognized standards...

## **E. THE TREATY BODIES MECHANISM – THE HUMAN RIGHTS COMMITTEE**

For the core UN human rights treaties, States parties undertake to report on a regular basis on implementation of treaty provisions in their domestic order. The members of the Treaty body examine state reports in public and adopt 'concluding observations' or 'concluding comments' on existing problems for which specific or general recommendations and advice are given (section 1).

Follow-up reports are also requested by the treaty bodies which are assisted by a follow-up Special Rapporteur. The concluding observations of these reports are contained in the annual report to the General Assembly.

It has been observed that there are considerable delays in the states' responses because of lack of expertise, typical reluctance, and additional workload considering the fact that a report must be prepared for each core human rights treaty to which the state is a party.

In addition, most treaty bodies issue 'general comments'<sup>12</sup> that give authoritative guidance on the general obligations and scope of the treaty provisions (section 2).

<sup>11</sup> <http://www.un.org/News/Press/docs//2011/ga11050.doc.htm>

<sup>12</sup> These are called 'recommendations' under the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women

For those treaties that implement an optional complaints procedure (as established by an optional protocol ratified by the state party), individuals are entitled to bring directly their complaints to the treaty body (section 3). Treaty bodies adopt decisions – called ‘views’ or ‘opinions’ – by consensus which are general characterised as ‘quasi-judicial’.

The Human Rights Committee has clarified in its General Comment 33 that despite the fact that its views are non-binding, they ‘exhibit some important characteristics of a judicial decision’.<sup>13</sup>

A follow-up mechanism is facilitated by a Special Rapporteur for follow-up on views.

## ➤ THE HUMAN RIGHTS COMMITTEE

It is an expert body composed of independent experts who monitors the implementation of the International Covenant of Civil and Political Rights. As described above, its main activities included 1) State reporting, 2) General Comments 3) Complaints Procedure under Optional Protocol to the International Covenant on Civil and Political Rights.

### (1) State reporting

*Report of the Human Rights Committee, Volume I, Ninety-seventh session (12–30 October 2009) Ninety-eighth session (8–26 March 2010) Ninety-ninth session (12–30 July 2010) General Assembly, Official Records, Sixty-fifth session Supplement No. 40 (A/65/40), A/65/40 (Vol. I)*

[NB: the emphasis is in the original]

#### 67. Croatia

(1) The Human Rights Committee considered the second periodic report of Croatia (CCPR/C/HRV/2) at its 2661st and 2662nd meetings (CCPR/C/SR.2661 and 2662), held on 14 and 15 October 2009, and adopted at its 2681st meeting (CCPR/C/SR.2681), held on 28 October 2009, the following concluding observations.

(17) The Committee expresses concern about reports that acts of intimidation of, and attacks on journalists have not been properly investigated by the State party and that the perception that journalists are at particular risk of attacks has a chilling effect on the exercise of freedom of the press (arts. 14 and 19).

**The State party should strengthen its measures to prevent intimidation of journalists, and to promptly investigate, bring to trial and punish perpetrators of attacks on, or threats against, journalists and to compensate the victims. It should also publicly condemn such instances of intimidation and attacks and generally take vigorous action to ensure freedom of the press.**

#### 68. Russian Federation

(1) The Committee considered the sixth periodic report of the Russian Federation (CCPR/C/RUS/6) at its 2663rd, 2664th and 2665th meetings (CCPR/C/SR.2663-2665), held on 15 and 16 October 2009, and adopted the following concluding observations at its 2681st meeting (CCPR/C/SR.2681), held on 28 October 2009.

<sup>13</sup> HRC, General Comment 33, CCPR/C/GC/ 33, 3 November 2008, para. 11.

(16) The Committee expresses its concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders in the State party, which has created a climate of fear and a chilling effect on the media, including for those working in the North Caucasus, and regrets the lack of effective measures taken by the State party to protect the right to life and security of these persons (arts. 6, 7, and 19).

**The State party is urged to:**

- (a) Take immediate action to provide effective protection to journalists and human rights defenders whose lives and security are under threat due to their professional activities;**
- (b) Ensure the prompt, effective, thorough, independent, and impartial investigation of threats, violent assaults and murders of journalists and human rights defenders and, when appropriate, prosecute and institute proceedings against the perpetrators of such acts;**
- (c) Provide the Committee with detailed information on developments in all cases of criminal prosecutions relating to threats, violent assaults and murders of journalists and human rights defenders in the State party covering the period between 2003 and 2009.**

#### **70. Mexico**

(1) The Human Rights Committee considered the fifth periodic report of Mexico (CCPR/C/MEX/5) at its 2686th to 2688th meetings, held on 8 and 9 March 2010 (CCPR/C/SR.2686 to 2688). At its 2708th meeting, held on 23 March 2010 (CCPR/C/SR.2708), it adopted the following concluding observations.

#### **C. Principal subjects of concern and recommendations**

(4) The Committee is concerned at the lack of significant progress in the implementation of its previous recommendations, including those relating to violence against women, the deployment of the armed forces for ensuring public security, and the lack of protection of human rights defenders and journalists, and regrets that many subjects of concern still remain (art. 2).

**The State party should take all necessary measures to give full effect to all recommendations adopted by the Committee.**

(the emphasis is in the original)

(20) The Committee welcomes the establishment of a Special Prosecutor's Office for Crimes against Journalists, but regrets the lack of effective measures taken by the State party to protect their right to life and security and to sanction the perpetrators of such violations. It also welcomes the decriminalization of slander and libel at the federal level, but remains concerned at the lack of such decriminalization in many states (arts. 6, 7 and 19).

**The State party should guarantee the right of journalists and human rights defenders to freedom of expression in the conduct of their activities. It should also:**

- (a) Take immediate steps to provide effective protection to journalists and human rights defenders whose lives and security are under threat due to their professional activities, including by the timely adoption of the bill on crimes committed against freedom of expression exercised through the practice of journalism;**
- (b) Ensure the prompt, effective, and impartial investigation of threats, violent attacks and assassinations perpetrated against journalists and human rights defenders and, where appropriate, prosecute and institute proceedings against the perpetrators of such acts;**

**(c) Provide the Committee with detailed information on all cases of criminal prosecutions relating to threats, violent attacks and assassinations perpetrated against journalists and human rights defenders in the State party in its next periodic report;**

(the emphasis is in the original)

## **72. Uzbekistan**

(1) The Human Rights Committee considered the third periodic report of Uzbekistan (CCPR/C/UZB/3) at its 2692nd, 2693rd and 2694th meetings, held on 11 and 12 March 2010 (CCPR/C/SR.2692, 2693 and 2694). At its 2710th meeting, held on 24 March 2010 (CCPR/C/SR.2710), it adopted the following concluding observations.

(24) The Committee remains concerned about the number of representatives of independent non-governmental organizations (NGO), journalists, and human rights defenders imprisoned, assaulted, harassed or intimidated, because of the exercise of their profession. The Committee also notes with concern that some representatives of international organizations, including NGOs, are denied entry to the State party. Furthermore, it is also concerned about the absence of sufficient investigations on all alleged assaults, threats, or acts of harassment of journalists and human rights defenders. Finally, the Committee is concerned over the existing provisions in articles 139 and 140 of the Criminal Code on defamation and insult, which may be used to punish individuals who criticize the existing regime (arts. 19, 22 and 7).

**The State party should allow representatives of international organizations and NGOs to enter and work in the country and guarantee journalists and human rights defenders in Uzbekistan the right to freedom of expression in the conduct of their activities. It should also:**

**(a) Take immediate action to provide effective protection to journalists and human rights defenders who were subjected to assaults, threats, and intimidations due to their professional activities;**

**(b) Ensure the prompt, effective, and impartial investigation of threats, harassment, and assaults on journalists and human rights defenders and, when appropriate, prosecute and institute proceedings against the perpetrators of such acts;**

**(c) Provide the Committee with detailed information on all cases of criminal prosecutions relating to threats, intimidation, and assaults of journalists and human rights defenders in the State party in its next periodic report;**

**(d) Review the provisions on defamation and insult (arts. 139 and 140 of the Criminal Code) and ensure that they are not used to harass, intimidate, or convict journalists or human rights defenders.**

## **76. Colombia**

(1) The Human Rights Committee considered the sixth periodic report of Colombia (CCPR/C/COL/6) at its 2721st and 2722nd meetings, held on 15 and 16 July 2010 (CCPR/C/SR.2721 and 2722). At its 2739th meeting, held on 28 July 2010, it adopted the following concluding observations.

(17) The Committee is concerned at the frequent threats and harassment of human rights defenders, trade unionists and journalists in the performance of their work. The Committee notes the resources assigned to the protection programme of the Ministry of the Interior but considers that the State party has not fully complied with

its duty to guarantee the security and safety of witnesses and victims (arts. 6, 7, 17, 19 and 22).

**The Committee urges the State party to take effective steps to guarantee the security of human rights defenders, trade unionists and journalists. The State should continue to strengthen the protection programme of the Ministry of the Interior, allocate additional resources, ensure that the protection measures taken are coordinated with the beneficiaries and that intelligence agents are not involved in the programme. The State party should provide the Committee with detailed information on all criminal proceedings relating to threats, assaults and murders of human rights defenders, trade unionists and journalists in its next periodic report.**

#### 77. Cameroon

(1) The Committee considered the fourth periodic report submitted by Cameroon (CCPR/C/CMR/4) at its 2725th and 2726th meetings, held on 19 and 20 July 2010 (CCPR/C/SR.2725 and 2726). The Committee adopted the following concluding observations at its 2739th and 2740th meetings, held on 28 and 29 July 2010 (CCPR/C/SR.2739 and 2740).

(25) Notwithstanding the information provided by the State party that the freedom of the press is absolute and that no journalist is currently detained in Cameroon, the Committee remains concerned about consistent reports from national and international organizations monitoring freedom of the press of cases of harassment of journalists or media outlets by public officials. The Committee reiterates its concern about provisions in the Penal Code which render it a criminal offence to spread false news and about how journalists in a number of cases have been prosecuted for this or related crimes, such as the crime of defamation, as a consequence of their reporting (art. 19).

**The State party should review its legislation and practice to ensure that journalists and media outlets are not subjected to harassment and prosecution as a consequence of expressing their critical views and that any restriction on press and media activities is strictly compatible with the provisions of article 19, paragraph 3, of the Covenant.**

#### (2) General Comments (Scope of state obligations under ICCPR)

- ✓ **General Comment No. 06: The right to life (art. 6)**, 30/04/1982, Sixteenth session, 1982

3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures **not only to prevent and punish deprivation of life** by criminal acts, but also to **prevent arbitrary killing by their own security forces**. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

4. States parties should also take specific and effective measures to **prevent the disappearance of individuals**, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to **investigate thoroughly** cases of

missing and disappeared persons in circumstances which may involve a violation of the right to life.

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of **this right requires that States adopt positive measures**. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

- ✓ **General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant** - Eightieth session, Adopted on 29 March 2004 (2187th meeting) CCPR/C/21/Rev.1/Add. 13, 26 May 2004

3. Article 2 defines the scope of the legal obligations undertaken by States Parties to the Covenant. A general obligation is imposed on States Parties **to respect the Covenant rights and to ensure them to all individuals** in their territory and subject to their jurisdiction (see paragraph 10 below). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States Parties are required to give effect to the obligations under the Covenant in good faith.

6. The legal obligation under article 2, paragraph 1, is both **negative and positive in nature**. States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

7. Article 2 requires that States Parties adopt **legislative, judicial, administrative**, educative and other appropriate measures in order to **fulfil their legal obligations**. The Committee believes that it is important to raise levels of awareness about the Covenant not only among public officials and State agents but also among the population at large.

8. The article 2, paragraph 1, obligations are binding on States [Parties] and **do not, as such, have direct horizontal effect** as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against **acts committed by private persons** or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, **as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm** caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States

Parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.]

15. Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States Parties' establishing **appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law**. The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. **Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly**, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

18. Where the **investigations** referred to in paragraph 15 reveal violations of certain Covenant rights, States Parties must ensure that **those responsible are brought to justice**. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, **the problem of impunity** for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, article 7).

20. Even when the legal systems of States parties are formally endowed with the appropriate remedy, violations of Covenant rights still take place. This is presumably attributable to the failure of the remedies to function effectively in practice. Accordingly, States parties are requested to **provide information on the obstacles to the effectiveness of existing remedies** in their periodic reports.

- ✓ **Draft general comment No. 34 (Upon completion of the first reading by the Human Rights Committee), Article 19** Hundredth session, Geneva, 11-29 October 2010 CCPR/C/GC/34/CRP.5

This general comment replaces general comment No. 10

6. The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party.<sup>14</sup> Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.<sup>15</sup> The State party must also ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of freedoms of opinion and expression in so far as these Covenant rights are amenable to application between private persons or entities.<sup>16</sup>

[Original footnote numbering: 6,7, 8]

7. States parties are required to ensure that the rights contained in article 19 of the Covenant are enshrined in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

9. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. ... The harassment, intimidation or stigmatisation of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.<sup>17</sup>

[Original footnote numbering: 10]

24. Paragraph 3 may never be invoked as a justification for... Nor, under any circumstances, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.<sup>18</sup> Journalists are frequently subjected to such threats, intimidation and attacks because of their activities.<sup>19</sup> So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports.<sup>20</sup> All allegations of attacks on or other forms of intimidation or harassment of journalists, human rights defenders and others should be vigorously investigated, the perpetrators prosecuted,<sup>21</sup> and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.<sup>22</sup>

### **(3) Complaints Procedure**

#### **▪ Communication No. 1327/2004 Mohamed GRIOUA v Algeria**

*Date of adoption of Views:* 10 July 2007

<sup>14</sup> General comment No. 31, para. 4.

<sup>15</sup> Hertzberg et al. v. Finland, No. 61/1979.

<sup>16</sup> General comment No. 31, para. 8; Gauthier v. Canada, No. 633/1995.

<sup>17</sup> The harassment, intimidation or stigmatisation of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.

<sup>18</sup> Njaru v. Cameroon, No. 1353/2005.

<sup>19</sup> See, for instance, concluding observations on Algeria (CCPR/C/DZA/CO/3); concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Sudan (CCPR/C/SDN/CO/3).

<sup>20</sup> Njaru v. Cameroon, No. 1353/2005; concluding observations on Nicaragua (CCPR/C/NIC/CO/3); concluding observations on Tunisia (CCPR/C/TUN/CO/5); concluding observations on Syria (CCPR/CO/84/SYR); concluding observations on Colombia (CCPR/CO/80/COL).

<sup>21</sup> Ibid. and concluding observations on Georgia (CCPR/C/GEO/CO/3).

<sup>22</sup> Concluding observations on Guyana (CCPR/C/79/Add.121v).

The case concerned the arrest of author's son by military men and his subsequent disappearance.

7.4 The Committee reaffirms that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the **duty to investigate** in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish to the Committee the information available to it.

7.10 The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to its general comment No. 31 [para. 15], which states that failure by a State party to **investigate allegations** of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the information before it indicates that neither the author nor her son have had access to an effective remedy, and the Committee concludes that the facts before it reveal a violation of article 2, paragraph 3, of the Covenant, in conjunction with articles 7, 9 and 16,...

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where a violation has been established, **the Committee wishes to receive** from the State party, within 90 days, **information about the measures taken to give effect to the Committee's Views**. The State party is also requested to publish the Committee's Views.

- **Communication No. 1128/2002 Rafael Marques de Morais v Angola**

*Date of adoption of Views: 29 March 2005*

It concerns the unlawful arrest, detention and conviction of a **journalist** and the representative of the Open Society Institute in Angola who had written several articles critical of the President of the state.

8. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to **an effective remedy**, including compensation for his arbitrary arrest and detention, as well as for the violations of his rights under articles 12 and 19 of the Covenant. The State party is under an **obligation to take measures to prevent** similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, **the Committee wishes to receive** from the State party, within 90 days, **information about the measures taken to give effect to the Committee's Views**. The State party is also requested to publish the Committee's Views.

- **Communication No. 1250/2004 Sundara Arachchige Lalith Rajapakse v Sri Lanka**

Date of communication: 28 January 2003 (initial submission)

Date of adoption of Views: 14 July 2006

HUMAN RIGHTS COMMITTEE, Eighty-seventh session, 10-28 July 2006

IEWS, CCPR/C/83/D/1250/2004, 5 September 2006

It concerned the unlawful arrest, detention and torture of the author by police officers.

9.3 ... The Committee reiterates its jurisprudence that the Covenant does not provide a right for individuals to require that the State party criminally prosecute another person.<sup>8</sup> It considers, nevertheless, that the State party is under **a duty to investigate** thoroughly alleged violations of human rights, and to prosecute and punish those held responsible for such violations.

Original Footnote 8: Case No. 213/1986, H.C.M.A. v. the Netherlands, adopted 30 March 1989; Case No. 275/1988, S.E. v. Argentina, adopted 26 March 1990; Case Nos. 343-345/1988, R.A., V.N. et al. v. Argentina, adopted 26 March 1990.

9.5 Under article 2, paragraph 3, the State party has an **obligation to ensure that remedies are effective**. Expedition and effectiveness are particularly important in the adjudication of cases involving torture. The general information provided by the State party on the workload of the domestic courts would appear to indicate that the High Court proceedings and, thus, the author's Supreme Court fundamental rights case will not be determined for some time. The Committee considers that the State party may not avoid its responsibilities under the Covenant with the argument that the domestic courts are dealing with the matter, when it is clear that the remedies relied upon by the State party have been prolonged and would appear to be ineffective. For these reasons, the Committee finds that the State party has violated article 2, paragraph 3, in connection with 7 of the Covenant. Having found a violation of article 2, paragraph 3, in connection with article 7, and in light of the fact that the consideration of this case, as it relates to the claim of torture, remains pending before the High Court, the Committee does not consider it necessary, in this particular case, to determine the issue of a possible violation of article 7 alone of the Covenant.

11. The Committee is of the view that the author is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. **The State party is under an obligation to take effective measures to ensure that:** (a) the High Court and Supreme Court proceedings are expeditiously completed; (b) the author is protected from threats and/or intimidation with respect to the proceedings; and (c) the author is granted effective reparation. The State party is under an obligation to ensure that similar violations do not occur in the future. 12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, **the Committee wishes to receive** from the State party, within 90 days, **information about the measures taken to give effect to the Committee's Views**.

▪ **Communication No. 916/2000 Mr. Jayalath Jayawardena v Sri Lanka**

Date of communication: 23 February 2000 (initial submission)

Date of publication of Views: 26 July 2002

CCPR/C/75/D/916/2000, Human Rights Committee, Seventy-fifth session, 8 - 26 July 2002

3.1 **The author complains** that allegations made by the President of Sri Lanka on the state-owned media, about his alleged involvement with Liberation Tigers of Tamil Elam put his life at risk. Despite the fact that he was receiving death threats, the State party refused to grant him sufficient security neither investigate any of the death threats that he reported to the police.

7.2 In respect of the author's claim that the allegations made publicly by the President of Sri Lanka put his life at risk, the Committee notes that the State party has not contested the fact that these statements were in fact made. It does contest that the author was the recipient of death threats subsequent to the President's allegations but, on the basis of the detailed information provided by the author, the Committee is of the view that due weight must be given to the author's allegations that such threats were received after the statements and the author feared for his life. For these reasons, and because the statements in question were made by the Head of State acting under immunity enacted by the State party, the Committee takes the view that the State party is responsible for a violation of the author's right to security of person under article 9, paragraph 1, of the Covenant.

7.3 With regard to the author's claim that the State party violated his rights under the Covenant by **failing to investigate the complaints made by the author to the police in** respect of death threats he had received, the Committee notes the State party's contention that the author did not receive any death threats and that no complaints or reports of such threats were received. However, the State party has not provided any specific arguments or materials to refute the author's detailed account of at least two complaints made by him to the police. In the circumstances, the Committee concludes that the failure of the State party to investigate these threats to the life of the author violated his right to security of person under article 9, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee concludes that the **author is entitled to an appropriate remedy.**

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant and **to provide an effective and enforceable remedy** in case a violation has been established, the **Committee wishes to receive** from the State party, within 90 days, **information about the measures taken to give effect to its Views.** The State party is also requested to publish the Committee's Views.

▪ **Communication No. 821/1998 Mr. Rodger Chongwe v Zambia**

Date of communication: 7 November 1997

Date of publication of views 9 November 2000

Human Rights Committee, Seventieth session 16 October - 3 November 2000

CCPR/C/70/D/821/1998

The author, Zambian advocate and chairman of a 13-party opposition alliance, alleged that he and Dr. Kenneth Kaunda, for 27 years the President of Zambia, were shot and wounded by the police. His complaint about the issue of security of person was also found admissible.

5.2 The Committee observes that article 6, paragraph 1, entails an obligation of a State party to **protect the right to life** of all persons within its territory and subject to its jurisdiction. In the present case, the author has claimed, and the State

party has failed to contest before the Committee that the State party authorised the use of lethal force without lawful reasons, which could have led to the killing of the author. In the circumstances, the Committee finds that the State party has not acted in accordance with its obligation to protect the author's right to life under article 6, paragraph 1, of the Covenant.

5.3 The Committee recalls its jurisprudence that article 9(1) of the Covenant protects the right to security of person also outside the context of formal deprivation of liberty (1). The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction. In the present case, it appears that persons acting in an official capacity within the Zambian police forces shot at the author, wounded him, and barely missed killing him. **The State party has refused to carry out independent investigations**, and the investigations initiated by the Zambian police have still not been concluded and made public, more than three years after the incident. No criminal proceedings have been initiated and the author's claim for compensation appears to have been rejected. In the circumstances, the Committee concludes that the author's right to security of person, under article 9, paragraph 1 of the Covenant, has been violated.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 6, paragraph 1, and 9, paragraph 1, of the Covenant.

7. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr Chongwe with **an effective remedy and to take adequate measures to protect his personal security and life from threats of any kind**. The Committee urges the State party to carry out independent investigations of the shooting incident, and to **expedite criminal proceedings against the persons responsible** for the shooting. If the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and hurting of the author, the remedy should include damages to Mr Chongwe. The State party is under **an obligation to ensure that similar violations do not occur in the future**.

8. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant and to provide an **effective and enforceable remedy** in case a violation has been established, the **Committee wishes to receive** from the State party, within ninety days, information **about the measures taken to give effect to the Committee's Views**. The State party is also requested to publish the Committee's Views.

Footnote reference (1). See the Committee's Views in case No 195/1985, Delgado Paez, paragraph 5.5, adopted on 12 July 1990, document CCPR/C/39/D/195/1985, and in case No 711/1996 Carlos Dias, paragraph 8.3, adopted on 20 March 2000, document CCPR/C/68/D/711/1996

▪ **Communication No. 458/1991 Albert Womah Mukong v Cameroon**

Date of communication: 26 February 1991

Date of adoption of Views: 21 July 1994

HUMAN RIGHTS COMMITTEE, Fifty-first session, *CCPR/C/51/D/458/1991*

10 August 1994

It concerns the alleged unlawful arrest, detention and torture of the author by state officers. The author claimed that he was persecuted for his advocacy of multi-party democracy and the expression of opinions inimical to the ruling party.

9.6 The author has claimed a violation of his right to freedom of expression and opinion, as he was **persecuted for his advocacy of multi-party democracy** and the expression of opinions inimical to the State party's government. The State party has replied that restrictions on the **author's freedom of expression** were justified under the terms of article 19, paragraph 3.

9.7 **Under article 19**, everyone shall have the right to freedom of expression. Any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3(a) and (b) of article 19, and must be necessary to achieve the legitimate purpose. The State party has indirectly justified its actions on grounds of national security and/or public order, by arguing that the author's right to freedom of expression was exercised without regard to the country's political context and continued struggle for unity. While the State party has indicated that the restrictions on the author's freedom of expression were provided for by law, it must still be determined whether the measures taken against the author were necessary for the safeguard of national security and/or public order. The Committee considers that it was not necessary to safeguard an alleged vulnerable state of national unity by subjecting the author to arrest, continued detention and treatment in violation of article 7. It further considers that **the legitimate objective of safeguarding** and indeed strengthening national unity under difficult political circumstances **cannot be achieved by attempting to muzzle advocacy of multi-party democracy**, democratic tenets and human rights; in this regard, the question of deciding which measures **might meet the "necessity" test** in such situations does not arise. In the circumstances of the author's case, the Committee concludes that there has been a violation of article 19 of the Covenant.

11. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Albert W. Mukong with an effective remedy. The Committee urges the State party to grant Mr. Mukong appropriate compensation for the treatment he has been subjected to, to investigate his allegations of ill-treatment in detention, to respect his rights under article 19 of the Covenant, and to **ensure that similar violations do not occur in the future**.

▪ **Communication No. 1776/2008 Salem Saad Ali Bashasha and Milhoud Ahmed Hussein Bashasha v The Libyan Arab Jamahiriya**

Date of communication: 8 March 2008 (initial submission)

Date of adoption of Views: 20 October 2010

Human Rights Committee One hundredth session, 11 to 29 October 2010

CCPR/C/100/D/1776/2008, 2 November 2010.

It concerns the alleged unlawful arrest, detention and subsequent disappearance of the author's cousin (Milhoud Ahmed Hussein Bashasha) and the author's suffering as a result of the uncertainty of his cousin's fate. The author complains also about the state's failure to investigate his cousin's disappearance.

7.2 ...[The Committee]...reaffirms that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.<sup>17</sup> **It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to**

**investigate** in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it. In cases where the author has submitted allegations to the State party that are corroborated by credible evidence and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider an author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. 18

Footnote 17: See communications No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.7; No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3, and No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 7.2.

Footnote 18: See Communication No. 1439/2005, *Sid Ahmed Aber v. Algeria*, Views adopted on 13 July 2007, para. 7.2.

7.3 With respect to the alleged violation of **article 6**, paragraph 1, the Committee recalls its General Comment 6 on article 6, which states, inter alia, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish facilities and procedures to **investigate thoroughly**, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.<sup>19</sup> The Committee observes that on 20 June 2009, the family was provided with Milhoud Ahmed Hussein Bashasha's death certificate, without any explanation as to the cause or the exact place of his death or any information on any investigations undertaken by the State party. In the circumstances, the Committee finds that the right to life enshrined in article 6 has been violated by the State party.

Footnote 19: See General Comment No. 6, A/37/40, para. 4.

7.8 The author invokes article 2, paragraph 3, of the Covenant, which requires States parties to ensure that individuals have **accessible, effective and enforceable remedies for** asserting the rights enshrined in the Covenant. The Committee reiterates the importance it attaches to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It **refers to its General Comment No. 31**, which states that failure by a State party to **investigate** allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>26</sup> In the present case, the information before the Committee indicates that the author's cousin did not have access to such effective remedy, and the Committee therefore concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with article 7.<sup>27</sup>

Footnote 26: See General Comment No. 31, CCPR/C/21/Rev.1/Add.13, paras. 15 and 18.

Footnote 27: See communication No. 1422/2005, *El Hassy v. the Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.9; and communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.9.

9. In accordance with **article 2, paragraph 3**, of the Covenant, the State party is under an obligation to provide the author with an **effective remedy**. The Committee therefore urges the State party **a) to conduct a thorough and effective investigation** into the disappearance and death of the author's cousin; **b) to provide adequate information** resulting from its investigation; **c) to return to the family the mortal remains of Mr. Milhoud Ahmed Hussein Bashasha**, provided that the State party has not already done so; **d) to prosecute**, try and punish those held responsible for the violations; and **e) to provide adequate compensation** for the author and Milhoud

Ahmed Hussein Bashasha's family for the violations suffered by the author's cousin. The State party is also under an **obligation to take measures to prevent similar violations in the future**.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and **to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive** from the State party, within 180 days, **information about the measures taken** to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

▪ **Communication No. 1640/2007 Abdelhakim Wanis El Abani (El Ouerfeli) v Libyan Arab Jamahiriya**

Date of communication: 15 October 2007 (initial submission)

Date of adoption of Views: 26 July 2010

Human Rights Committee, Ninety-ninth session 12–30 July 2010

CCPR/C/99/D/1640/2007, 14 September 2010

It concerns a complaint about the disappearance of the author's father and the failure of the state authorities to investigate his disappearance and prosecute those responsible.

7.4 ...It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a **duty to investigate in good faith all allegations** of violations of the Covenant made against it and its representatives and to furnish to the Committee the information available to it.

7.10 The author also invokes article 2, paragraph 3, of the Covenant, under which States parties are required to ensure that individuals have **accessible, effective and enforceable remedies for asserting the rights recognized** in the Covenant. The Committee reiterates the importance which it attaches to States parties' **establishment of appropriate judicial and administrative mechanisms for addressing alleged violations** of rights under domestic law. It refers to its general **comment No. 31** (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that failure by a State party to **investigate** allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>20</sup> In the present case, the information before the Committee indicates that the author's father did not have access to an effective remedy, and the Committee therefore concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with article 6, paragraph 1, and article 7.21

Footnote 20 See paras. 15 and 18

Footnote 21 See *El Hassy v. the Libyan Arab Jamahiriya* (note 8 above), para. 6.9; and communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.9.

9. In accordance with **article 2, paragraph 3**, of the Covenant, the State party is under an obligation to provide the author with **an effective remedy**, which would include a **thorough and diligent investigation** into the disappearance of the author's father, adequate information on the results of its investigations and **appropriate compensation** for the author's father, as well as for his mother and his brothers and sisters, for the violations suffered. The Committee considers the State party duty-bound to conduct thorough investigations into alleged violations of human rights,

particularly enforced disappearances and acts of torture, and to prosecute, try and punish those responsible for such violations.<sup>22</sup> The State party is also under an obligation to take measures to **prevent similar violations in the future**.

Footnote 22 See *El Hassy v. Libyan Arab Jamahiriya* (note 8 above), para. 8; *Boucherf v. Algeria* (note 21 above), para. 11; and *Medjnoune v. Algeria* (note 13 above), para. 10.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to **provide an effective and enforceable remedy** in the event that a violation is established, **the Committee wishes to receive** from the State party, within 180 days, **information about the measures taken to give effect to the Committee's Views**. The State party is also requested to publish the Committee's Views.

▪ **Communication No. 1353/2005 Philip Afuson Njaru v Cameroon**

Date of communication: 24 January 2005 (initial submission)

Date of adoption of Views: 19 March 2007

HUMAN RIGHTS COMMITTEE, 111 Eighty-ninth session, 12 – 30 March 2007, CCPR/C/89/D/1353/2005, 14 May 2007

The author complains about police brutality and death threats against his life by officers. He alleges that these acts were intended to **punish him for the publication of articles** denouncing corruption and violence of the security forces, as well as to prevent him from freely exercising **his profession as a journalist**. He also complains about the lack of effective remedies.

6.3 The Committee notes the author's claim that he was subjected to threats on his life from police officers on numerous occasions and that the State party has **failed to take any action to ensure that he was and continues to be protected from such threats**. The Committee recalls its jurisprudence that article 9, paragraph 1 of the Covenant protects the right to security of the person also outside the context of formal deprivation of liberty.<sup>7</sup> In the current case, it would appear that the author has been repeatedly requested to testify alone at a police station and has been harassed and threatened with his life before and during his arrests. In the circumstances, and in the absence of any explanations from the State party in this respect, the Committee concludes that the author's right to security of person, under article 9, paragraph 1, in conjunction with article 2, paragraph 3 of the Covenant has been violated.

Footnote 7 Communication No. 821/1998, Chongwe v. Zambia, Views adopted on 25 October 2000, Communication No. 195/1985, Delgado Paez v. Colombia, Views adopted on 12 July 1990, Communication No. 711/1996, Dias v. Angola, Views adopted on 18 April 2000. Communication no. 916/2000, Jayawardena v. Sri Lanka, Views adopted on 22 July 2002.

6.4 As to the claim of a violation of the **author's right to freedom of expression** and opinion, with respect to his persecution for the publication of articles denouncing corruption and violence of the security forces, the Committee notes that under article 19, everyone shall have the right to freedom of expression. Any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraphs 3 (a) and (b) of article 19 and it must be necessary to achieve the legitimate purpose. The Committee considers that

there can be **no legitimate restriction under article 19, paragraph 3, which would justify the arbitrary arrest, torture, and threats to life of the author and thus, the question of deciding which measures might meet the "necessity" test** in such situations does not arise.<sup>8</sup> In the circumstances of the author's case, the Committee concludes that the author has demonstrated the relationship between the treatment against him and his activities as journalist and therefore that there has been a violation of article 19, paragraph 2, in conjunction with article 2, paragraph 3 of the Covenant.

Footnote 8: Communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994.

8. The Committee is of the view that the author is entitled, under article 2, paragraph 3(a), of the Covenant, to **an effective remedy**. The State party is under an obligation to take effective measures to ensure that: **(a) criminal proceedings** are initiated seeking the prompt prosecution and conviction of the persons responsible for the author's arrest and ill-treatment; **(b) the author is protected from threats** and/or intimidation from members of the security forces; and **(c) he is granted effective reparation** including full compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and **to provide an effective and enforceable remedy** in case a violation has been established, the **Committee wishes to receive** from the State party, within 90 days, **information about the measures taken to give effect to the Committee's Views**.

## F. PRESS RELEASES

*Human Rights Council holds panel discussion on the protection of journalists in armed conflict* (4 June 2010).

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/8E3BF226FA3984E3C125773800453C00?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/8E3BF226FA3984E3C125773800453C00?OpenDocument)

*Deep concerns over crackdown on human rights defenders since Liu Xiaobo was awarded the Nobel peace prize* (13 December 2010 )

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/C95261A0343D72D5C12577F8004EB6DC?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/C95261A0343D72D5C12577F8004EB6DC?OpenDocument)

*Human rights expert concerned about threats to media in Somalia* (10 December 2007)

[http://www.unog.ch/80257631003154D9/\(httpNewsByYear\\_en\)/C125763C00590FD6C12573AD00334CD3?OpenDocument](http://www.unog.ch/80257631003154D9/(httpNewsByYear_en)/C125763C00590FD6C12573AD00334CD3?OpenDocument)

*Slain and persecuted journalists remembered on world press freedom day* (2 May 2006)

[http://www.unog.ch/80257631003154D9/\(httpNewsByYear\\_en\)/80257631003154D9C1257162004ED432?OpenDocument](http://www.unog.ch/80257631003154D9/(httpNewsByYear_en)/80257631003154D9C1257162004ED432?OpenDocument)

## **G. CONCLUSION**

The United Nations Organization is a universal system extensively decentralised by the existence of a great number of organs, agencies, committees, subcommittees, divisions, etc. Its contribution to the improvement of human rights around the world, and in particular in countries which are not subjected to any regional system of control, is considerable. Markus Schmidt, a former UN legal officer and currently an academic, has observed that '[n]ational-level implementation of recommendations and decision of treaty bodies, special procedures mandate holders, and the Human Rights Council improves slowly but steadily, even though there remains considerable room for the improvement of existing follow-up mechanisms.<sup>23</sup> A better co-ordination among the various UN organs will reduce the repetition and unnecessary duplication of work and will direct resources towards the actual implementation of long established international human rights standards and norms.

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<sup>23</sup>M. Schmidt, 'United Nations' in , D. Moeckli, S. Shah, S. Sivakumaran (eds), *International Human Rights law*, (Oxford: OUP, 2010), p. 431.