



Fédération Internationale des Ligues des Droits de l'Homme

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ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
DE LOS DERECHOS HUMANOS

الفدرالية الدولية لحقوق الانسان

FIDH Position Paper

**To the Attention of the United Nations General Assembly
At its 63rd Session**

October 2008

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INTRODUCTION

The General Assembly must echo the voice of the voiceless and condemn, as well as prevent, serious human rights violations

In this Position Paper, the International Federation for Human Rights (FIDH) documents the priorities it believes the General Assembly (GA), in particular the Third Committee on Social, Humanitarian and Cultural Affairs, at its 63rd session, should not fail to unanimously act upon.

The resolutions that will be adopted this fall must demonstrate the impeccable allegiance of the United Nations system to all human rights and fundamental freedoms.

FIDH, as an umbrella federation of 155 member organizations in more than 100 countries, constantly hears human rights defenders from all over the world underscore the power and the meaning of the GA resolutions to their every day work and advocacy at the national, regional, and international levels. This is why FIDH deeply wishes that throughout the work of this session, the General Assembly is led by an untarnished commitment to echo the voice of victims of human rights violations, the voice of the voiceless.

When freedom to defend human rights is repressed, when people are killed or imprisoned solely for having exercised their rights, it is the duty of the international community – the General Assembly’s duty – to condemn the violations, and work together on putting an end to them through peaceful means, including thorough and open debates.

Adopting resolutions is yet only one of these means – *but not one too many*. We hope that Member States to the General Assembly will hear the victims’ voices and give full significance to the mandate with which they are highly entrusted.

FIDH Recommendations

FIDH, along with its human rights leagues on the ground, requests the Third Committee to condemn the intensification of the human rights violations in **Iran**, whether in relation to the death penalty, human rights defenders and other peaceful activists, or the repression against minorities. The Third Committee should also denounce the worsening human and civil rights situation of political opponents and ethnic minorities in **Burma**, a situation caused by the military junta in power, and advocate for a true national reconciliation.

From a thematic perspective, FIDH strongly hopes to see the General Assembly adopt again this fall a resolution on a **moratorium on the use of death penalty**, in order to reaffirm last year’s historic move to urge all states to maintain international safeguards guaranteeing the rights of those facing the death penalty, to reduce the number of offences for which the death penalty may be imposed, and to establish a moratorium on executions with the view to abolishing the death penalty.

Furthermore, in view of the global scope of the issue and the seriousness and frequency of the violations related to it, FIDH demands that the Third Committee unanimously adopts a firm and strongly-worded resolution that will request all United Nations Member States to fully and unequivocally, **protect human rights and fundamental freedoms while countering terrorism**.

Also, a powerful way for the United Nations to reaffirm its commitment to the Universal Declaration on Human Rights celebrating its 60th anniversary next December, would be to adopt by consensus **the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**, which was approved by consensus at the Human Rights Council’s 8th session last June, and represents a tremendously important step in the development of international law.

For the overall work of the 63rd session, FIDH

would like to underscore how fundamental it is for the General Assembly to unconditionally support the **international justice** system it has spearheaded for the last sixty years. In all resolutions referring to international justice, the International Criminal Court, accountability and impunity, and the principle of universal jurisdiction, we demand that the General Assembly be as firm and as unequivocal as possible in reaffirming its own previous commitments on these issues, that is full support to the development of international justice, and to the absolute independence of prosecutors, judges, and lawyers.

Finally, while it remains unclear whether or not action – such as a statement by a group of Member States – will be taken on this issue, FIDH still wishes to stress that, as international law already provides for, **all forms of discrimination based on sexual orientation or gender identity** are crimes of utmost concern that should be actively prevented and firmly punished. This, in particular when the rights affected on the basis of such discrimination are the fundamental human rights the United Nations so rightly advocate for, such as: the right to life, the right to be free from torture and cruel, inhuman, or degrading treatment, free from arbitrary arrest or detention, the right to fully enjoy social, economic, and cultural rights, and the right to health.

GEOGRAPHIC PRIORITIES

Why adopting country-resolutions on Iran and Burma?

The Iranian and Burmese authorities have, over the past few years, ceased full co-operation with the Human Rights mechanisms put in place by the United Nations, and have ignored their recommendations, while perpetuating violations on a rising scale.

There is no effective resort in either Iran or in Burma for victims of human rights violations – there is no independent judiciary to adjudicate upon these violations. Any person publicly denouncing the scandalous human rights violations perpetrated in these countries are liable to prosecution and extremely harsh sentencing. In fact, democracy does not exist in Iran or in Burma.

The only available resort is before the international community, through the voices of the UN Member States.

Country Resolution vs. Universal Periodic Review

The Universal Periodic Review (UPR) in Geneva is an opportunity to review every member of the United Nations. However, Iran and Burma not being members of the Human Rights Council, their review will not occur until 2010. This is too far down the road and does not address the need for an imminent response in face of such increasingly deteriorating situations, where human rights violations are massive and systematic.

The respect for human rights is a direct and effective defense against threats to regional and international peace and security

Human rights are not the sole cause for concern with regard to Iran or Burma. Both country situations are currently on the UN Security Council's agenda, while a number of Member States have shown concerns regarding the damaging role that Iran and Burma are playing in the destabilization of peace and security in their respective region.

By underlining the human rights situation in these countries, the international community

intervenes at the crossroad of many crises. This is why pushing for a greater respect for human rights, democracy, and the rule of law in Iran and in Burma would undoubtedly favor a more fertile environment for solving other preoccupying and underlying issues.

1. ISLAMIC REPUBLIC OF IRAN

The human rights situation continued to deteriorate throughout 2008, confirming the pattern of widespread and systematic violations in the Islamic Republic of Iran. This poor record is confirmed in all fields: the death penalty, the situation of human rights defenders and other peaceful activists, and the repression against minorities.

Unprecedented infringements of international human rights standards in the application of the death penalty

At a time when momentum is gathering across the world to end capital punishment, the Islamic Republic of Iran defies international human rights law by the high level of executions under conditions that blatantly violate international human rights standards.

According to the Iranian League for the Defense of Human Rights (LDDHI), in 2007, more than 320 persons were executed in Iran, and since January 2008, more than 200 persons.

The laws of the Islamic Republic of Iran notably punish with death the following crimes:

- Adultery committed by a married person – he/she will be stoned to death (article 83, para. 2 of the Islamic Penal Law).
- Heresy (meaning giving up the Islamic faith) (article 513)
- Killing a Muslim (Article 207 of the Islamic Penal Law).
- Drug trafficking (specific law on drug trafficking)
- Armed robbery (art. 185 of the Islamic Penal Law)

- Rape (article 82 para. 4 of the Islamic Penal Law)
- Homosexual acts (art. 110 of the Islamic Penal Law)
- Incest (art. 82, para. 1 of the Islamic Penal Law)
- Fornication with the wife of one's father (art. 82, para. 2 of the Islamic Penal Law)
- Fornication of a non-Muslim with a Muslim woman (82, para. 3 of the Islamic Penal Law)
- Armed struggle, including with knives (art. 183 of the Islamic Penal Law)

FIDH notes that the draft penal code provides that a Muslim converting to another religion may also be condemned to death.

This situation blatantly violates article 6 of the International Covenant on Civil and Political Rights (ICCPR) on the right to life, according to which the death penalty must be restricted to the “most serious crimes.” That concept, stated the former UN Commission on Human Rights, must not go beyond “intentional crimes with lethal or extremely grave consequences”¹ and the death penalty “must not be imposed for sexual relations between consenting adults.”²

For the first time in years, a journalist and a civil society activist was executed, demonstrating the terrible setback for human rights in Iran. On 4 August 2008, **Mr. Yaghoub Mehrnehad**, a social activist in the southeastern province of Sistan and Baluchistan and journalist for the Mardomsalari (Democracy) newspaper, was executed. He was also the Executive Director of Voice of Justice Youth Association, a local NGO registered with the authorities since 2002. Mr. Yaghoub Mehrnehad was sentenced to death for belonging to the “Jondollah” (Soldiers of Allah), a Baluchi armed group. This execution followed a blatantly unfair trial held behind closed doors,

¹ UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

² UN Commission on Human Rights, Res. 2005/59 on the Question of the Death Penalty.

in the absence of a lawyer and without his family being informed of the hearing.

In addition, the Islamic Republic of Iran is one of the few countries executing juvenile offenders. Sixteen-year-old **Mohammad Hassanzadeh**, an Iranian Kurd, was executed on 10 June 2008 for a crime committed when he was fourteen. 106 juvenile offenders are known to be on death row in Iran, but the true figure could even be higher. This is a gross violation of customary international law.

Executions in Iran are usually carried out by hanging and in public. Public executions constitute a cruel, inhuman and degrading treatment. The UN Commission on Human Rights had repeatedly called upon States not to carry out capital punishment in public or in any other degrading manner.³

In the draft Penal Code presented by the government to the Majlis, stoning and other corporal punishments are also maintained.

Human Rights defenders and other peaceful activists at the forefront of repression

In 2008, violations of the rights of human rights defenders continued unabated, with an ongoing repression against women human rights defenders, and an alarming increase of harassment against human rights activists from minority areas and against those working on minority issues. The blatant violation of the ICCPR and of the 1998 UN Declaration on Human Rights Defenders triggered largely insufficient public international reaction.

This year, the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), documented acts of harassment and legal proceedings against 12 activists involved in the “One Million Signatures” Campaign⁴,

³ UN Commission on Human Rights, Res. 2004/67 and 2005/59 on the Question of the Death Penalty.

⁴ The Campaign seeks to put pressure on the Iranian

bringing the total number of activists repressed for their involvement in the Campaign since its creation in 2006 to about 50. The increasing popularity of this movement unfortunately led to an increasing repression against its members.

On February 4, 2008, the Tehran Revolutionary Court sentenced Ms. **Rezvan Moghadam** to six months of suspended imprisonment and ten lashes and Ms. **Parvin Ardalan** to two years of imprisonment, for having participated in a peaceful gathering in front of the Tehran Revolutionary Court to mark International Women’s Day in 2007.

On April 19 and 21, 2008 respectively, the Tehran Revolutionary Court sentenced Ms. **Nasrin Afzali** and Ms. **Nahid Jafari** to six months of suspended imprisonment and ten lashes for “acting against national security”. One month later, on May 25, Mr. **Amir Yaghoub-Ali**, also a member of the Campaign, received a one-year sentence on the same legal basis.

Even more concerning is the nature of the sentences against women belonging to ethnic minorities: Ms. **Hana Abdi** and **Ronak Safarzadeh** are punished for being women's rights activists and Kurdish. On June 18, 2008, Ms. Abdi was sentenced to five years imprisonment for “gathering and collusion to threaten national security,” a sentence reduced to 18 months imprisonment combined with internal exile in Razan (Hamedan department). Ms. Safarzadeh is still detained awaiting trial.

On September 2, 2008, the Tehran Revolutionary Tribunal sentenced Ms. **Parvin Ardalan**, Ms. **Nahid Keshavarz**, Ms. **Jelveh Javaheri** and Ms. **Maryam Hosseinkhah**, to six months of prison for “publishing information against the State,” for having

legislators in order to withdraw provisions that have adverse effects on women’s human rights. See Urgent Appeals IRN 001 / 0208 / OBS 021.1, IRN 002 / 0308 / OBS 030, IRN 003 / 0408 / OBS 051, IRN 005 / 0408 / OBS 064, IRN 006 / 0508 / OBS 073, IRN 007 / 0508 / OBS 090, IRN 013 / 1107 / OBS 154.1, and Press Release of September 5, 2008.

written articles for two online newspapers that defend women's rights in Iran. They have all been released on bail after having appealed their sentences, but remain prosecuted.

In August, the Iranian authorities even dared publicly attacking the Nobel Peace Prize and Secretary General of the Defenders of Human Rights Center (DHRC), **Shirin Ebadi**, since she has decided to defend in court seven members of the Baha'i minority. On August 8, 2008, a long article was published on the website of the official Iranian Republic News Agency (IRNA), titled "Ebadi bogged down with the Baha'is". Ms. Ebadi is criticized, *inter alia*, for appearing without headscarf abroad, for defending homosexuals and for criticizing Islamic punishments. It is further mentioned that the activities of Ms. Shirin Ebadi and the DHRC were welcomed by the "damned sect of Baha'is in Israel in October 2007", and that Ms. Shirin Ebadi defends "CIA agents."

In September, the Observatory was informed that eight Kurdish human rights defenders were in hunger strike as a means to protest against the arbitrary character of their detention:

- Mr. **Adnan Hassanpour** and **Abdolvahid** (also known as Hiwa) **Boutimar**, two Kurdish journalists and active members of Iranian civil society sentenced to death on July 16, 2007; their sentence was quashed in appeal and they are waiting for a second trial.
- Mr. **Mohammad Sadigh Kaboudvand**, a journalist and the President of the Association for the Defense of Human Rights in Kurdistan (RMMK), sentenced to ten years of prison in May 2008,
- Ms. Hana Abdi and Ms. Ronak Safarzadeh, Mr. **Massoud Kordpour**, one of the founding members of the Foundation for Democracy and Human Rights in Iranian Kurdistan, and a civil society activist working on human rights and environmental issues, detained since August 25, 2008,
- Mr. **Yasser Goli**, a student and Kurdish rights activist detained since October 9, 2007, as well as his mother,
- Ms. **Fatemeh Goftari**, a member of Azar Mehr, who began serving her three months'

prison sentence on August 22, 2008, and - Ms. **Zeynab Bayazidi**, a member of the One Million Signatures Petition Campaign, arrested on July 7, 2008 and sentenced on August 10, 2008 to four years of prison. Her sentence was confirmed on October 7, and she was also condemned to internal exile out of Kurdistan, in Zanjan.

Iranian courts often resort to accusations of terrorism to silence Kurdish or other minority activists, which makes them even more vulnerable to repression. These cases of harassment are the sad evidence of the determination of the Iranian authorities to pursue their attempts to silence any dissenting voice in the country.

Kamyar and Arash Alai, two brothers and physicians involved in an NGO working on HIV-AIDS, were arrested in June 2008 for activities contrary to state security, while they were about to leave Iran for Mexico to attend a global conference on HIV-AIDS. **Dr. Mehdi Zakerian**, an academic specialized in international law, was arrested in mid-August 2008, and is detained since then. He was about to leave Iran for the US to start a fellowship at the University of Pennsylvania and was awaiting his visa when he was detained. At the end of September, he was able to contact his family on the phone. It is unclear whether there are formal charges against him.

Crackdown on religious and ethnic minorities

The Baha'is and other religious minorities:

The repression against the Baha'i community has been continuing in the Islamic Republic of Iran. Six Baha'i leaders were arrested in Tehran on 14 May 2008, by agents of the Ministry of Intelligence and are currently detained at the Evin prison in Tehran.

The six men and women arrested are members of the national coordinating group of Baha'i in Iran - the national-level coordinating group is an informal organ that was formed with the knowledge of the government to assist 300,000 members of the

Baha'i community in Iran. According to the Baha'i International Community (BIC), the arrests took place during an early morning raid on the residences of the persons concerned. Three out of the six members had been previously arrested and were subsequently released after periods of detention ranging from five days to four months. Those arrested on 14 May 2008 are: Mrs. Fariba Kamalabadi, Mr. Jamaloddin Khanjani, Mr. Afif Naeimi, Mr. Saeid Rezaie, Mr. Behrouz Tavakkoli, and Mr. Vahid Tizfahm.

The seventh member of the national coordinating group, Mrs. Mahvash Sabet had been arrested in Mashhad in March 2008, after being summoned by the Ministry of Intelligence office. Since 1st September 2008, the seven prisoners of conscience are reportedly not being held anymore in solitary confinement. However, their lawyers have still not been granted access to the detainees or their case files.

Ms. Shirin Ebadi accepted to defend the seven Baha'i prisoners. As a result, in August and September 2008, attacks and denigration have been intensifying against her and her family in the official media.

Two Sunni religious representatives were killed in Kurdistan at the beginning of October and pressure against secular religious leaders is on the rise: Ayatollah Kazemeyni Boroujerdi is purging a ten-year prison sentence and several of his sympathizers were condemned to one to five years of prison.

The Kurds: Over the past year, the repression against persons belonging to the Kurdish minority has been harsh. Several political activists have been condemned to death and six of them are currently on death row: Farzad Kamangar (teacher and member of the Kamyaran teacher's association, was also an active member of a local human rights organization banned by the government), Anvar Hossein-Panahi, Farhad Vakili, Ali Heydarian, Arsalan Olyayi and Habibullah Latifi. Accused of belonging to a Kurdish armed group PJAK, those persons are

considered as "fighting God" (*mohareb*).

Since 25 August 2008, more than 70 Kurdish prisoners, including human rights defenders, started a hunger strike in order to protest against their detention and the conditions in which they are being detained. They were particularly calling for an end to the executions of political prisoners and prisoners of opinion, the respect of their defense rights and the possibility for international organizations to visit detainees. They stopped their hunger strike on 11 October 2008.

The repression against activists belonging to ethnic and religious minorities is dramatically on the rise in Iran. Sometimes, they are accused of terrorism, attacks against national security, or treason, even when there is no evidence against them. The authorities do not seem to make any distinction between peaceful advocacy for the right of minorities and terrorist attacks by armed groups.

The Baluch, Azeri and Arabic minorities:

The pattern is the same with regards to other minorities in Iran, notably the Baluch and those belonging to the Arabic minority of Khuzestan. The above-mentioned execution of Mr. Yaghoub Mehrnehad, a social activist in the southeastern province of Sistan and Baluchistan and journalist for the Mardomsalari (Democracy) newspaper, illustrates this trend. Repression against Sunni increased, notably in Kurdestan and Baluchistan, and tens of Azeri students and activists were arrested in September 2008.

For all these reasons, FIDH calls upon you to support a resolution condemning this situation at the Third Committee of the United Nations General Assembly, requesting that the Secretary General remains seized of the matter and reports to the GA 64th session. FIDH also requests Member States to avoid any attempt of no-action motion that would prevent the GA Third Committee and the GA plenary from addressing such a crucial human rights issue.

2. BURMA - MYANMAR

In September 2007, thousands of protesters went down the streets of Rangoon and other major cities to protest in what would be called the “Saffron Revolution,” which resulted in arbitrary arrests, torture, and the killing of peaceful protesters. Ostensibly, the demonstrations were initiated to protest increases in fuel prices, and the subsequent poverty and degradation that followed. However, the protests were stained by the brutalization of Buddhist monks, and triggered a repressive political climate in which calls for basic human rights were neither tolerated nor addressed. Indeed, the military junta has consistently crushed any call for democracy.

The indifference of the junta to the well-being of the Burmese people should come as no surprise to the international community. When cyclone Nargis hit Burma in May 2008, the junta ignored the calls of the international community, including the United Nations, and blocked the foreign aid desperately needed by the Burmese people, fearful that the foreign aid necessary to save the lives of thousands of men, women, and children might somehow weaken its political power. In the end, Nargis caused the worst natural disaster in the recorded history of Burma, resulting in the deaths of tens of thousands Burmese.

In face of international condemnation following the violent suppression of the « Saffron Revolution », the junta offered to set up a national referendum on a draft constitution to take place in May 2008, as a first step towards the elections planned for 2010. However, this proved to be a show and meaningless referendum, clearly meant to soften the international community rather than achieve any kind of democratic purpose.

Illegitimate Referendum and Undemocratic Constitution

In a climate of fear and chaos following Nargis, the junta held a referendum during which a draft constitution was proposed. Several aspects seriously challenged the

legitimacy of this referendum. In spite of UN Secretary General Ban Ki Moon's call to delay the referendum, the junta proceeded with it in a context of national disorder, since it took place immediately following the natural disaster. Information about the 194-page long constitution was largely unavailable to citizens. According to Alternative Asean Network on Burma/Myanmar (ALTSEAN), the cost of a copy of the constitution was equivalent to the average daily wage. In addition, only 465,000 copies were printed, ostensibly to inform a population of more than 30 million voters. The copies were not translated into any of the ethnic languages of minority groups in Burma, further marginalizing minorities. Chapter V of the Referendum law barred monks and nuns from voting. The vast majority of migrant workers, and over 200,000 of internally displaced persons were simply excluded from voting.

The constitution itself was also a blow to democracy in Burma. A provision excludes *de facto* Nobel Peace Prize Winner Daw Aung San Suu Kyi from running for president as it prohibits the election of a president who has children of foreign nationality. Chapter V of the constitution states that the President enjoys immunity for all his actions accomplished in the exercise of his or her functions. Chapter IV stipulates that one quarter of the Parliament's seats must be reserved for the Armed Forces, and Chapter XII states that more than 75% of Parliament must agree in order to amend the constitution, which effectively grants the military the power to block any amendment.

The fundamental right of freedom of association and involvement in the government is explicitly renounced in the constitution as well. Furthermore, Article 121 (A) and Article 232 (A) (3) stipulate that anyone who has been serving prison term, having been convicted by the court, shall not have the right to stand for election as Pyithu Hluttaw (People's Assembly) representative or as State President, and shall not be appointed as Minister. Combined with a policy of rampant arbitrary arrests that makes dissident citizens ineligible for office, the constitution

ensures the suppression of the rights to freedom of expression and to participate in public affairs.

Given the lack of consideration for basic rights in the constitution and through the referendum that instituted it, the upcoming election has been internationally condemned. On 18 September 2008, Ibrahim Gambari, UN Special Advisor on Burma/Myanmar, announced that he did not support the 2010 election, adding that a dialogue should begin between the junta and the NDL. Similarly, George Yeo, Singapore Minister of Foreign Affairs stated on 27 September 2008 that the 2010 elections have “no international legitimacy.”

Arbitrary Arrests and Violence

In order to maintain control over the population, the junta has institutionalized human rights violations. Among others, journalists have been subjected to intimidation and continuous harassment, such as Thet Zin and Sein Win Aung of Myanmar Nation magazine, arrested on 15 February 2008. Similarly, peaceful protesters are consistently subjected to the same fate, such as the « 88 Generation Student Group » which participated in the 2007 protest. According to Burma Lawyer's Council, Ko Ko Gyi, Ko Pyone Cho, Jimmy, Htay Kywe, Mya Aye, Pannait Tun, Kyaw Kyaw Htwe, and Min Zeya were arrested on 21 August 2007, arbitrarily detained since then and await their trial on criminal charges.

On 23 September 2008, the Junta granted amnesty to 9,002 prisoners, some of whom were political prisoners. Notable among these political prisoners was NDL activist Win Tin. While this is a commendable move, the situation for political prisoners remains dire.⁵ The conditions of their detention are deplorable; after his release, Win Tin confirmed he was tortured during his 19 year and three month detention, stating he was methodically deprived of sleep and beaten

⁵ ALTSEAN report « THE SPDC CONSTITUTIONAL REFERENDUM: A DEAD END FOR DEMOCRACY ». 2 May 2008.

several times. Mr. Thomás Ojea Quintana, UN Special Rapporteur on Human Rights in Myanmar, confirmed that as of 10 August 2008, some 2,000 political prisoners were still incarcerated. More recently, on 1 October 2008 Ohn Kyaing, journalist and NDL elected Member of Parliament, was taken from his house and detained for reasons which have yet to be explained. The Thailand-based Assistance Association for Political Prisoners-Burma (AAPP) and Washington, DC-based U.S. Campaign for Burma (USCB) have documented the massive increase of political prisoners in Burma/Myanmar in a year, from 1192 in August 2007 to at least 2123 in September 2007, one year after the issuance of the UN Security Council Presidential Statement on 11 October 2007 that demanded the release of all political prisoners in Burma.

Minorities struggle to survive in Burma

Ethnic groups in Burma are a major target of the military regime's repressive policies. Armed attacks occur against ethnic groups where killings, torture, and rape are commonplace, as are junta-orchestrated grave violations of social, economic and cultural rights such as forced labor, land-grabbing, forced relocations, and destruction of agricultural areas (which provide food and other necessary goods to those populations). The junta has signed ceasefire agreements with some of the minority armed groups. However, it does not fully respect the agreement and the regions concerned have turned into highly militarized areas.

FIDH consequently calls upon the Third Committee of the UN General Assembly to adopt a resolution promoting national reconciliation in Burma, outlining clear benchmarks and timelines for reconciliation, and proposing efficient means of monitoring progress, with the help of the Secretary General. It should also request that the Special Adviser and the Special Rapporteur are able to fully and effectively discharge their mandates. The resolution should call for the release of all political prisoners as a first step towards the re-establishment of democracy.

THEMATIC PRIORITIES

1. MORATORIUM ON DEATH PENALTY

Since the adoption by the UN General Assembly of resolution 62/149 calling for a universal moratorium on the use of the death penalty by an overwhelming majority of states (104), the number of abolitionist countries has further increased. In 2008, **Uzbekistan** and **Argentina** abolished the death penalty for all crimes.

However, according to the World Coalition against the Death Penalty, at least 24 countries continued to carry out executions in 2007. According to the same source, in 2007, **88%** of executions registered took place in **China**, the **United States**, **Iran**, **Pakistan** and **Saudi Arabia**.

In **China**, since 1 January 2007, in theory no person can be executed without the approval of the Supreme People's Court. According to the Chinese authorities the number of executions has been reduced by close to 25% since this law entered into force. Figures must not be taken point blank since the Chinese authorities have classified the death penalty as a "State secret", thus avoiding any verification. There are three elements that generate doubt about the effectiveness of this law: the Supreme Court only has one month to send its decision to the provincial courts but only has two offices with meager resources, while there are thousands of people on death row. The US-based organization "Dui Hua Foundation" estimates that around 6,000 people have been executed in China in 2007.

In the **United States**, the abolitionist movement is strengthening and the number of executions is diminishing: 98 executions in 1999, 42 in 2007, and 24 up to October 2008 (according to the Death Penalty Information Center - DPIC). An increasing number of states are adopting a moratorium on executions, and some of them abolished the capital punishment. The death penalty was

declared unconstitutional in the State of New York in 2004, while the State of New Jersey abolished the death penalty in 2007. On 25 June 2008, the US Supreme Court found it unconstitutional to punish the rape of a child with death penalty.

However, that same court ruled on 16 April 2008 that lethal injection did not amount to cruel and unusual punishment and therefore is not contrary to the Constitution. On 14 October 2008, the US Supreme Court also rejected an execution appeal on behalf of Troy Davis, in which famous case seven of nine witnesses against Mr. Davis recanted their testimony, with two claiming that the police had pressured them to testify against him. In this case, there was no physical evidence and no murder weapon presented by the prosecution, and three witnesses have said another man admitted to the murder. Studies demonstrated that in 96% of the US death penalty states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both.

According to the Iranian League for the Defense of Human Rights (LDDHI), in 2007, more than 320 persons were executed in **Iran**, and since January 2008, around 200 persons. As recently as 27 July 2008, 29 persons have been executed. At a time when momentum is gathering across the world to end capital punishment, the Islamic Republic of Iran defies international human rights law by the high level of executions under conditions that blatantly violate international human rights standards. See the August 2008 case of Mr. Yaghoub Mehrnehad in this Position Paper section on Iran (1. 1)

In addition, the Islamic Republic of Iran is one of the few countries executing juveniles offenders. 16-year-old Mohammad Hassanzadeh, an Iranian Kurd, was executed on 10 June 2008 for a crime committed when he was 14. Almost 140 juvenile offenders are known to be on death row in Iran, but the true figure could be even higher. The use of the death penalty against those who committed their offences while under the age of 18 is a

gross violation of customary international law, no matter what age the person has reached at the time of their execution.

On July 2, 2008, the **Pakistan** Federal Cabinet has adopted a proposal to commute the death penalty to life imprisonment. This proposal is subjected to approval by the President before it enters into force. This will benefit the 7000 death row prisoners in Pakistan. However, the application of death penalty in Pakistan falls far below international standards. At every step, from arrest to trial to execution, the safeguards against miscarriage of justice are weak or non-existent, and the possibility that innocents will be executed is frighteningly high. Given the very serious defects of the law itself, of the administration of justice, of the police service, the chronic corruption and the cultural prejudices affecting women and religious minorities, capital punishment in Pakistan is discriminatory and unfair, and allows for a high probability of miscarriages of justice.

According to the World Coalition against the death penalty, in **Saudi Arabia**, almost half of the executions involve foreigners (76 out of 158 people executed in 2007) and foreign nationals are often more exposed to miscarriages of justice and unfair trials than nationals. As a result of their origins, they have little chance of escaping capital punishment. Prisoners are usually sentenced to death after receiving insufficient, sometimes even inexistent, legal representation and consular assistance.

FIDH therefore strongly urges the Third Committee of the General Assembly to vote in favor of the resolution on a moratorium on executions. Should a given Member State be unable to vote in favor of the resolution, FIDH strongly encourages abstention and not to sign any statement of disassociation.

2. THE PROTECTION OF HUMAN RIGHTS WHILE COUNTERING TERRORISM

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

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

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

The United States, the most pro-active State in that area, and today mostly infamous for its Guantanamo Camp justified by the so-called “war on terror,” have been repeatedly condemned by international treaty bodies for going too far in disregarding their international obligations.

Since gaining control of detainees, the U.S. current administration has, and still is holding them virtually incommunicado at

Guantánamo Bay, Cuba, under conditions that violate their constitutional and international rights, but also, and again arbitrarily, in detention centers abroad that remain, to this day, secret. Whether in Iraq, Afghanistan, in secret detention centers, or in Guantanamo, damning reports from international bodies and major rights groups have surfaced revealing the military and the Central Intelligence Agency's use of tortuous practices – including waterboarding (to induce the sensation of drowning), isolation for up to 30 days, beatings, round-the-clock interrogations, extreme and prolonged stress positions, sleep deprivation up to 50 days, sensory assaults, removal of clothing, hooding, death threats, and inhuman force-feeding. The majority of these techniques were approved for use at the highest level of the administration.

The United States are not the only ones who have fallen into the trap of answering to human rights violations by perpetrating other human rights violations. Many **countries from all regions of the world** have been involved in such practices. Worrying policies and instruments are being ratified in many other regions of the world, clearly and consciously ignoring their international human rights treaty obligations.

All international human rights treaties provide for derogations and limitations when States are facing emergency serious threats, which are compatible with human rights and fundamental freedoms.

FIDH calls upon the Third Committee of the General Assembly to firmly and unequivocally condemn all restrictive measures adopted to counter terrorism which result in human rights violations, and to urge states to fully cooperate with the UN special procedures, as well as to implement UN human rights mechanisms' recommendations that call for the respect of human rights in the fight against terrorism.

3. OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON SOCIAL, ECONOMIC, AND CULTURAL RIGHTS

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) sets forth human rights such as labor rights, a right to health, education, and adequate standard of living. Though all human rights are recognized by the international community to be universal, indivisible, interdependent and interrelated, economic, social and cultural rights have not been given the same priority as civil and political rights, which are recognized by the International Covenant on Civil and Political Rights (ICCPR).

Adopting an Optional Protocol to the ICESCR, similar to that of the ICCPR, would rectify this imbalance and allow a mechanism by which individuals could petition an international human rights body about the violation of their rights under the Covenant. Noting that such a system is imperative for the ICESCR to be properly implemented, FIDH strongly urges the General Assembly to adopt the Protocol.

There are several benefits to adopting the Optional Protocol and allowing for such a complaint mechanism. First, it will obviously provide legal redress to an individual who has suffered a wrong under the ICESCR. Second, the Protocol creates a means by which a state can implement the Covenant and its internationally recognized human rights. Third, it develops jurisprudence for holding states accountable for violations that infringe on rights recognized by the Covenant. Most importantly, the Optional Protocol would bring economic, social, and cultural rights to the same level of attention as civil and political rights.

As a member of the NGO Coalition for the adoption of an Optional Protocol to the ICESCR, FIDH strongly encourages the General Assembly to adopt this individual complaint mechanism. In doing so, the Assembly will emphasize the importance of

economic, social, and cultural rights.

4. SUPPORT FOR INTERNATIONAL JUSTICE

With the adoption of the Rome Statute ten years ago, and the ensuing creation of the International Criminal Court (ICC), the international community recognized the need to put an end to impunity for serious crimes, genocide, crimes against humanity and war crimes. With this development, the international community further asserted that all states have an obligation to ensure that such crimes are investigated and, where necessary, prosecuted at the national level.

Accountability for those considered a threat to the very peace and security that the Security Council resolutions seek to secure is the idea behind international justice, and the creation of international criminal tribunals such as the *ad hoc* tribunals for the former Yugoslavia and Rwanda and the ICC. Without accountability for the most serious crimes, there is no guarantee that peace and security can be achieved.

Affirming the need for accountability, the principle of extraterritorial or universal jurisdiction is enshrined in international treaties and customary law, and its exercise is therefore not a violation of national sovereignty. Indeed, seeking out and prosecuting those said to be responsible for grave breaches of international humanitarian law is a key aspect of the four Geneva Conventions of 1949 and other treaties, such as the UN Convention against Torture or the UN Convention on the Protection of all Persons from Enforced Disappearances. Recognizing that these crimes are so heinous that they affect the international community as a whole, an exercise of universal jurisdiction complements the efforts of international courts and tribunals to end impunity.

In the aftermath, or at times in the midst of, a large-scale conflict, often no effective domestic judicial structures are in place. This

leads to an obstruction to victims' right to access justice. In other cases, a lack of political will within the state's apparatus responsible for crimes may block victims' access to justice. Bearing in mind that all states have a duty and at times an obligation to prevent, investigate, and punish perpetrators of genocide, war crimes, crimes against humanity, torture, and enforced disappearances, the General Assembly must encourage Member States to cooperate with the international bodies of criminal justice.

FIDH urges the General Assembly to stand firm for the end of impunity and to allow equal protection under the law and equal access to justice by recognizing, in its various resolutions, the major contribution of international justice to peace and security. The General Assembly, when issuing resolutions on various interrelated matters, must reaffirm the importance and the independence of the international justice system, international tribunals, and existing state obligations, such as prosecuting perpetrators of serious international crimes under the principle of universal jurisdiction. It must work towards strengthening international cooperation within that system, in order to ensure prevention, investigation, and prosecution of those who bear the responsibility for serious human rights violations such as genocide, crimes against humanity, war crimes, torture, and enforced disappearances.