

# Amnesty International assessment of implementation of recommendations made in the first cycle of the UPR:

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UPR 14, 22 October – 5 November 2012

## Argentina: Follow up to the previous review

During its previous review in 2008, Argentina supported recommendations to address discrimination against women,<sup>1</sup> to improve prison conditions;<sup>2</sup> to take steps to ensure that there is no impunity for the crime of torture;<sup>3</sup> to observe the principle of speedy trials in the context of ongoing human rights trials;<sup>4</sup> and to ensure respect for the rights of Indigenous Peoples.<sup>5</sup> Amnesty International welcomes that Argentina provided a mid-term review in September 2010 on the state of implementation of the recommendations it supported. However, serious human rights violations continue to pervade the country.

### WOMEN'S HUMAN RIGHTS

Argentina has made advances in addressing discrimination against women, particularly in increasing women's political participation. However, women still face obstacles in accessing information and services relating to their sexual and reproductive rights.<sup>6</sup> It is estimated that between 460,000 and 600,000 illegal abortions take place each year in Argentina. Almost 80,000 women and girls are hospitalized each year due to complications as a result of illegal abortions. For the last 20 years, the lack of access to safe abortions has been the primary cause of maternal mortality in the country. According to statistical information for 2009 from the Ministry of Health, more than 100 women die every year as a result of unsafe abortions; most victims are from poor or low income backgrounds.<sup>7</sup>

### PRISON CONDITIONS

Progress in improving prison conditions has been slow. Prisons continue to be overcrowded and lack adequate structures, resulting in detainees being held in cruel, inhuman or degrading conditions; some prisons operate at more than twice their

<sup>1</sup> Report of the Working Group on the Universal Periodic Review of Argentina, 13 May 2008 (A/HRC/8/34) recommendation 64.2 (United Kingdom, Mexico).

<sup>2</sup> A/HRC/8/34, recommendation 64.8 (Slovenia, Germany, Canada).

<sup>3</sup> A/HRC/8/34, recommendations 64.6 (Netherlands) and 64.7 (Sweden).

<sup>4</sup> A/HRC/8/34, recommendation 64.5 (Switzerland).

<sup>5</sup> A/HRC/8/34, recommendations 64.15 (Republic of Korea) and 64.16 (Nigeria).

<sup>6</sup> See Human Rights Committee CCPR/C/101/D/1608/2007, 28 April 2011.

<sup>7</sup> Ministry of Health - Estimate of abortion in Argentina Pantelides, Edith (Conicet and Ceneq-Centro de Estudios de Población) y Mario, Silvia (Instituto Gino Germani).

capacity.<sup>8</sup> A number of deaths have occurred in detention centres in the northern province of Catamarca and in Buenos Aires, as a result of violence committed by prisoners or guards.<sup>9</sup>

#### TORTURE AND ILL-TREATMENT

Argentina has made little progress in addressing impunity for the crime of torture. Amnesty International continues to receive information of torture and ill-treatment in prisons and detention centres, where investigations are rarely carried out to bring those responsible to justice.<sup>10</sup> There have been some advances in the implementation of mechanisms to prevent torture and ill-treatment, particularly at the local level.<sup>11</sup> However, at the national level Argentina has still not introduced a National Preventive Mechanism in line with its obligations under the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.<sup>12</sup> A draft law to establish the National Preventative Mechanism was passed by the Chamber of Deputies in 2011, and at the time of writing was under discussion before the Senate.

By contrast, significant progress has been made in securing the conviction of those responsible for grave human rights violations committed during the period of military rule from 1976 to 1983. However, with regard to more recent human rights violations, for example in cases of alleged forced eviction, excessive use of force and torture and ill-treatment, investigations either do not take place or they take too long to ensure that those responsible are brought to justice.

#### INDIGENOUS RIGHTS

Although Argentina has made some improvements in relation to the rights of Indigenous Peoples, Indigenous communities continue to be threatened with eviction by private landowners, despite a blanket ban on evictions until November 2013 pending the completion of a nationwide survey of Indigenous territories.<sup>13</sup> Members of Indigenous communities have suffered direct attacks by private actors, resulting in the deaths of at least two individuals since 2008.<sup>14</sup>

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<sup>8</sup> Sistema Nacional de Estadísticas sobre Ejecución de la Pena, 2008, available at: <http://www.jus.gob.ar/media/108979/Informe%20SNEEP%20ARGENTINA%202008.pdf> (accessed 10 April 2012).

<sup>9</sup> See United Nations <http://acnudh.org/2012/02/la-oficina-regional-para-america-del-sur-de-naciones-unidas-derechos-humanos-expresa-preocupacion-por-la-reciente-ola-de-muertes-y-violencia-en-las-carceles/> (accessed 10 April 2012).

<sup>10</sup> See Amnesty International, *Amnistía Internacional envía carta a las autoridades para poner fin a violaciones de derechos humanos en Santiago del Estero* (Index: AMR 13/001/2012), available at: <http://www.amnesty.org/pt-br/library/asset/AMR13/001/2012/es/c9668e59-3fd4-4806-aec9-9aec26a271a8/amr130012012es.html> (accessed 3 April 2012).

<sup>11</sup> In recent years provinces including Chaco, Rio Negro and Mendoza have passed specific legislation to create a local preventive mechanism.

<sup>12</sup> Argentina has been a party to the Optional Protocol since 2004.

<sup>13</sup> See Amnesty International, *Argentina: Urgent Action – Indigenous families at risk of forced eviction*, UA: 163/11 (Index: AMR 13/001/2011) 02 June 2011.

<sup>14</sup> See Amnesty International, *Argentina: Urgent Action – Two children attacked by armed men*, UA: 245/10 (Index: AMR 13/005/2011), 11 November 2011 and *Argentina: Urgent Action – Indigenous leader killed in Argentina*, UA: 341/11 (Index: AMR 13/006/2011) 22 November 2011.

## Czech Republic: Follow up to the previous review

In its response to the recommendations made during the first Universal Periodic Review of the Czech Republic in 2008, the government set out a number of measures it had already undertaken or was planning to take to implement the recommendations made to it by other states.<sup>15</sup> These included measures to adopt anti-discrimination legislation;<sup>16</sup> to fight discrimination against Roma and to ensure their equal access to education, housing, health care and employment;<sup>17</sup> and to provide adequate protection for all marginalized groups against racially motivated violence.<sup>18</sup>

Since then, the government has taken a number of positive steps with respect to implementing the recommendations from the first review. In 2009, the parliament adopted the Anti-Discrimination Act, and in March 2010, the government adopted the National Action Plan for Inclusive Education which aims to address shortcomings in access to education for Romani children. Amnesty International is concerned, however, that the Anti-Discrimination Act has shortcomings which may affect its effectiveness in ensuring access to remedies for Roma families who experience discrimination (this is explained in further detail below).

With regard to the elimination of discrimination and segregation of Romani pupils in schools, Amnesty International is extremely concerned that the government has failed to take the necessary measures that would effectively address this problem. In fact, there have been significant setbacks in the implementation of the necessary reforms. In particular, the National Action Plan for Inclusive Education is not being implemented and the Ministry of Education lacks capacity and political will to put an end to discrimination in access to education.

## Ghana: Follow up to the previous review

During its first Universal Periodic Review in 2008, Ghana supported recommendations to enhance women's rights and gender equality and address violence/domestic violence,<sup>19</sup> to promote children's rights,<sup>20</sup> to strengthen judicial structures,<sup>21</sup> to eliminate harmful traditional practices including female genital mutilation,<sup>22</sup> to co-operate with the UN human rights system,<sup>23</sup> to strengthen social, economic and cultural rights,<sup>24</sup> including the right to adequate housing,<sup>25</sup> to intensify

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<sup>15</sup> Addendum to the Report of the Working Group on the Universal Periodic Review of the Czech Republic, 25 August 2008 (A/HRC/8/33/Add.1).

<sup>16</sup> Report of the Working Group on the Universal Periodic Review of the Czech Republic, 23 May 2008 (A/HRC/8/33) recommendation 44.20 (China).

<sup>17</sup> A/HRC/8/33, recommendation 44.30 (Algeria, Romania).

<sup>18</sup> A/HRC/8/33, recommendation 44.3 (Algeria).

<sup>19</sup> Report of the Working Group of the Universal Periodic Review of Ghana, 29 May 2008 (A/HRC/8/36) recommendations 68.1 (France, Switzerland, United Kingdom, Hungary, Algeria), 68.2 (Czech Republic, Italy), 68.3 (Czech Republic), 68.4 (Czech Republic, Switzerland), 68.5 (Mexico, Canada, Slovenia, Ireland, Austria), 68.9 (Hungary, the Netherlands, Austria), 68.18 (Slovenia) and 68.22 (Brazil).

<sup>20</sup> A/HRC/8/36, recommendation 68.6 (Finland, Italy, Switzerland).

<sup>21</sup> A/HRC/8/36, recommendation 68.4 (Czech Republic, Switzerland).

<sup>22</sup> A/HRC/8/36, recommendation 68.5 (Czech Republic, Mexico, Canada, Slovenia, Ireland, Austria).

<sup>23</sup> A/HRC/8/36, recommendations 68.7 (Hungary) and 68.8 (Hungary).

<sup>24</sup> A/HRC/8/36, recommendation 68.14 (Cuba).

<sup>25</sup> A/HRC/8/36, recommendation 68.22 (Brazil).

measures to combat and sanction police brutalities,<sup>26</sup> and to ratify outstanding human rights treaties.<sup>27</sup>

High levels of violence against women and girls continue to be reported throughout the country, with violence in the family thought to affect one in three women. In January 2010, the Domestic Violence and Victim Support Unit of the Police Service adopted a strategic plan aimed at improving its functioning.<sup>28</sup> However, the Unit remains under-resourced and seriously inadequate in ensuring protection and services to victims of violence. Although the Domestic Violence Act 2007 allows prosecution of marital rape, little progress has been made in the implementation of the Act.<sup>29</sup> Victims of violence are still obliged to pay the costs of their medical examination.<sup>30</sup>

Ghana has not yet harmonized the norms of citizenship for foreign spouses in line with the Convention on the Elimination of All Forms of Discrimination against Women.<sup>31</sup> Further legislative reforms are needed to ensure equal rights between women and men.

Although female genital mutilation was made a criminal offence in 1994, the practice continues, particularly in the North of Ghana.<sup>32</sup>

Ghana has made little progress in strengthening the right to adequate housing.<sup>33</sup> Despite a presidential announcement that forced evictions would no longer take place, people continue to suffer violations of their right to adequate housing.

There has been an increase in the number of police officers and there are reports of efforts to modernize forensic facilities and police equipment.<sup>34</sup> However, excessive use of force and unlawful killings by the police and security forces continue to be reported and measures to combat human rights violations committed by the police remain limited.

During Ghana's first review, recommendations were made to Ghana to decriminalize sexual activity between consenting adults; however, Ghana did not respond to these recommendations and sexual activity between consenting adults remains criminalized under Chapter 6, Article 104 of the Criminal Code, which prohibits "unnatural carnal knowledge" (defined to include consensual sexual intercourse between men). This clause has the effect of encouraging discrimination, harassment and persecution of people on the basis of their identity and consensual sexual behaviour.<sup>35</sup>

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<sup>26</sup> A/HRC/8/36, recommendation 68.17 (Switzerland).

<sup>27</sup> A/HRC/8/36, recommendations 12 (Mexico) and 13 (Mexico, UK, Netherlands).

<sup>28</sup> A/HRC/8/36, recommendation 68.2 (Italy).

<sup>29</sup> A/HRC/8/36, recommendation 68.2 (Czech Republic, Italy).

<sup>30</sup> A/HRC/8/36, recommendation 68.3 (Czech Republic).

<sup>31</sup> A/HRC/8/36, Recommendation 68.18 (Slovenia).

<sup>32</sup> A/HRC/8/36, recommendation 68.5 (Czech Republic, Mexico, Canada, Slovenia, Ireland, Austria).

<sup>33</sup> A/HRC/8/36, recommendation 68.14 (Cuba).

<sup>34</sup> A/HRC/8/36, recommendation 68.17 (Switzerland).

<sup>35</sup> A/HRC/8/36, paragraphs 16 (Czech Republic), 24 (Romania) and 50 (Slovenia).

## Guatemala: Follow up to the previous review

During the first Universal Periodic Review of Guatemala in 2008, reviewing states made recommendations on the ratification of international instruments;<sup>36</sup> institutional and human rights infrastructure;<sup>37</sup> co-operation with human rights mechanisms;<sup>38</sup> Indigenous Peoples;<sup>39</sup> discrimination;<sup>40</sup> the death penalty;<sup>41</sup> violence against women;<sup>42</sup> LGBT rights;<sup>43</sup> torture,<sup>44</sup> extrajudicial executions and enforced disappearances;<sup>45</sup> human rights defenders;<sup>46</sup> the administration of justice, security and the rule of law;<sup>47</sup> and impunity.<sup>48</sup> Guatemala did not expressly accept the specific recommendations, but welcomed them and said that it fully concurred with the concerns reflected therein.<sup>49</sup> Guatemala also noted that it would need to strengthen its actions in areas such as ratification of international instruments, strengthening of the legislative framework and human rights infrastructure, and the administration of justice and rule of law; combating discrimination and obtaining equality for Indigenous Peoples; ensuring the right to life, liberty and security; to freedom of expression, opinion and participation; and to economic, social and cultural rights.

Some progress has been made with respect to the issues raised in the first UPR. However, serious human rights violations against women, human rights defenders, Indigenous Peoples and those demanding justice for crimes of the past continue to blight Guatemala's human rights record, as outlined below.

## Japan: Follow up to the previous review

Japan has made little, and in some cases no progress in implementing recommendations made to it during its first Universal Periodic Review. Despite agreeing to consider ratifying a number of human rights instruments, including the First Optional Protocol to the International Covenant on Civil and Political Rights, the

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<sup>36</sup> Report of the Working Group on the Universal Periodic Review on Guatemala, 29 May 2008 (A/HRC/8/38) recommendation 89.1 (Mexico, Portugal, Canada, the Netherlands, France, Italy, Mexico, South Africa and Brazil).

<sup>37</sup> A/HRC/8/38, recommendations 89.2 (Algeria), 89.3 (Switzerland), 89.4 (Mexico) and 89.24 (Netherlands).

<sup>38</sup> A/HRC/8/38, recommendations 89.5 (Chile) and 89.7 (Slovenia).

<sup>39</sup> A/HRC/8/38, recommendations 89.12 (Canada, Denmark), 89.13 (Switzerland) and 89.37 (Jordan).

<sup>40</sup> A/HRC/8/38, recommendations 89.8 (United Kingdom), 89.9 (Mexico), 89.10 (South Africa) and 89.11 (Switzerland).

<sup>41</sup> A/HRC/8/38, recommendation 89.14 (Italy, United Kingdom).

<sup>42</sup> A/HRC/8/38, recommendations 89.15 (Canada, Slovenia) and 89.16 (Switzerland).

<sup>43</sup> A/HRC/8/38, recommendations 89.16 (Switzerland), 89.35 (Slovenia) and 89.36 (Czech Republic).

<sup>44</sup> A/HRC/8/38, recommendations 89.27 (Australia) and 89.28 (Canada).

<sup>45</sup> A/HRC/8/38, recommendations 89.27 (Australia) and 89.28 (Canada).

<sup>46</sup> A/HRC/8/38, recommendations 89.19 (Portugal), 89.20 (Switzerland), 89.21 (Norway, Canada), 89.22 (Australia, Ireland), 89.23 (United Kingdom), 89.30 (USA), 89.36 (Czech Republic) and 89.18 (Ukraine).

<sup>47</sup> A/HRC/8/38, recommendations 89.22 (Ireland), 89.23 (United Kingdom), 89.25 (Japan), 89.26 (Japan), 89.27 (Australia), 89.28 (Canada), 89.29 (Austria), 89.30 (USA), 89.31 (Switzerland), 89.32 (Japan), 89.33 (USA), 89.34 (Cuba), 89.35 (Slovenia) and 89.36 (Czech Republic).

<sup>48</sup> A/HRC/8/38, recommendations 89.22 (Ireland), 89.23 (United Kingdom), 89.29 (Austria), 89.30 (USA), 89.31 (Switzerland), 89.32 (Japan), 89.33 (USA), 89.34 (Cuba), 89.35 (Slovenia) and 89.36 (Czech Republic).

<sup>49</sup> UN Document A/HRC/8/52, paragraph 680.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities,<sup>50</sup> and the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to the Convention on the Elimination of All Forms of Discrimination against Women and to the International Convention on the Elimination of All Forms of Racial Discrimination, none of these instruments have been ratified by Japan.<sup>51</sup>

Japan accepted a recommendation to establish an independent national human rights institution in line with the Paris Principles.<sup>52</sup> However, the Basic Framework on the Establishment of a new National Human Rights Institute published by the Ministry of Justice in August 2011 falls well short of the Paris Principles. The Basic Framework forms the parameters for a draft Bill to establish a National Human Rights Institute, which is being prepared for submission to the Diet (parliament).

Japan also committed to ensure appropriate treatment of inmates under the substitute detention system (the *daiyo kangoku*).<sup>53</sup> However, Amnesty International continues to have concerns about the *daiyo kangoku* system, as detailed below.-

## Peru: Follow up to the previous review

During its first Universal Periodic Review in 2008, Peru supported recommendations to report regularly to the human rights treaty bodies and to respond to Special Procedures' communications and questions;<sup>54</sup> to co-ordinate with civil society in developing human rights policy and involve them in follow-up to the UPR;<sup>55</sup> and to co-operate more closely with the UN Committee against Torture by setting up a national complaint registration and investigation system and a national preventive mechanism.<sup>56</sup>

As regards the national preventive mechanism, there has been some progress in that a bill was proposed in 2010 for the human rights ombudsman (*Defensoría del Pueblo*) to take on the functions of a national preventive mechanism. However, to date no concrete measures have been taken to establish such a mechanism.

Peru further indicated that it would study all the recommendations, and these would "serve as substantial guidance for the human rights agenda".<sup>57</sup> However, important recommendations were made to Peru in areas where key human rights concerns persist. These include recommendations to promote and protect the human rights of vulnerable groups, in particular Indigenous Peoples;<sup>58</sup> to fully implement the

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<sup>50</sup> Japan signed the Convention on the Rights of Persons with Disabilities in 2007, but has not yet ratified it.

<sup>51</sup> A/HRC/8/44/Add.1, paragraph 1.a, referring to recommendation 60.2 (Algeria, Canada, Mexico, and Qatar).

<sup>52</sup> A/HRC/8/44/Add.1, paragraph 1(b), referring recommendation 60.1 (Albania, UK, Mexico, Brazil, Portugal, Canada and the Netherlands).

<sup>53</sup> A/HRC/8/44Add.1, paragraph 2(f), referring to recommendation 60.13 (Algeria, Belgium, Canada, and the UK).

<sup>54</sup> Report of the Working Group on the Universal Periodic Review of Peru, 28 May 2008 (A/HRC/8/37) recommendation 52.17 (Slovenia).

<sup>55</sup> A/HRC/8/37, recommendation 52.20 (USA, UK).

<sup>56</sup> A/HRC/8/37, recommendation 52.4 (b) (Mexico).

<sup>57</sup> Report of the Human Rights Council on its Eighth Session, 1 September 2008 (A/HRC/8/52) paragraph 698.

<sup>58</sup> A/HRC/8/37, recommendation 52.1 (Philippines, Algeria).

recommendations of the Truth and Reconciliation Commission;<sup>59</sup> to address the issue of prison overcrowding and poor prison conditions, including providing prisoners with access to medical staff and court-appointed counsel, especially in the Challapalca prison;<sup>60</sup> and to ensure that human rights defenders can carry out their human rights work freely and without fear of intimidation.<sup>61</sup>

## **Republic of Korea: Follow up to the previous review**

During its previous Universal Periodic Review in 2008, recommendations were made to the Republic of Korea (South Korea) on ratifying key international treaties,<sup>62</sup> reviewing or abolishing the National Security Law,<sup>63</sup> abolishing the death penalty,<sup>64</sup> recognizing the right to conscientious objection<sup>65</sup> and protecting the rights of migrant workers.<sup>66</sup>

Numerous recommendations were made to South Korea to abolish or reform the National Security Law. Despite assurances from the authorities that this law is not misused, investigations, arrests and prosecutions of individuals and organizations under its vaguely worded clauses have increased significantly over the past four years (see below).

South Korea has not made any progress toward abolishing the death penalty (see below).

Plans to introduce alternative service for conscientious objectors have been on hold indefinitely since December 2008 (see below).

South Korea accepted several recommendations on protecting the rights of migrant workers,<sup>67</sup> however, men and women migrant workers, including women migrant workers, continue to be at risk of a range of human rights abuses, including discrimination, and verbal and physical abuse. Women migrant workers remain at particular risk of exploitation (see below).

## **Pakistan: Follow up to the previous review**

Pakistan's current civilian administration had been in government for a few months at the time of the first Universal Periodic Review in May 2008, following nine years of

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<sup>59</sup> A/HRC/8/37, recommendation 52.9 (France, Canada, Philippines, Germany, Republic of Korea, Netherlands, UK).

<sup>60</sup> A/HRC/8/37, recommendation 52.12 (Canada, Uruguay).

<sup>61</sup> A/HRC/8/37, recommendation 52.14 (Australia, Netherlands, Belgium, Brazil).

<sup>62</sup> Report of the Working Group on the Universal Periodic Review of the Republic of Korea, 29 May 2008 (A/HRC/8/40) recommendations 64.16 (France), 64.26 (UK) and 64.7 (Algeria, Philippines, Egypt, Mexico, Peru).

<sup>63</sup> A/HRC/8/40, recommendations 64.4 (Democratic Peoples' Republic of Korea), 64.24 (United Kingdom) and 64.33 (United States of America).

<sup>64</sup> A/HRC/8/40, recommendation 64.20 (Belgium, Italy, Mexico, Netherlands, United Kingdom of Great Britain and Northern Ireland).

<sup>65</sup> A/HRC/8/40, recommendation 64.17 (Slovenia).

<sup>66</sup> A/HRC/8/40, recommendations 64.3 (Indonesia), 64.8 (Algeria), 64.11 (Canada), 64.15 (Canada), 64.30 (Romania) and 64.32 (Mexico).

<sup>67</sup> A/HRC/8/40, recommendations 64.3 (Indonesia), 64.8 (Algeria), 64.11 (Canada), 64.15 (Canada), 64.30 (Romania) and 64.32 (Mexico).

direct military rule. The new government accepted recommendations made during the review on freedom of religion,<sup>68</sup> women's rights,<sup>69</sup> the human rights situation in the Tribal Areas,<sup>70</sup> impunity for abuses by national security forces,<sup>71</sup> ratification of human rights treaties,<sup>72</sup> and freedom of expression and the media.<sup>73</sup>

Since the review, progress has been made on some of these issues. For example, Pakistan's parliament passed a series of bills seeking to enshrine fundamental human rights protections and Pakistan has also taken important steps to strengthen the independence of the judiciary by returning to service the majority of the higher court judges deposed during the 2007 state of emergency. The government's invitation to the UN Working Group on Enforced or Involuntary Disappearances to visit the country is another welcome development,<sup>74</sup> as are the steps taken to establish new human rights institutions, including a national human rights commission.<sup>75</sup>

However, some of the steps taken by the government to implement the UPR recommendations are limited in scope. For example, on 23 June 2010, Pakistan ratified the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, the government entered a large number of reservations (see also below). Measures to reform legislation affecting the Tribal Areas, notably the Frontier Crimes Regulation 1901 and the Action (in Aid of Civil Power) Regulations, fail to comply with international standards of administration of justice or human rights. The Political Parties Act was extended to the Federally Administrated Tribal Areas in August 2011, allowing the establishment and operation of political parties there; however, politicians fear that threats and abuses by security forces and the Taliban may hinder political activity and make free and fair elections there virtually impossible.

Pakistan has failed to implement several of the UPR recommendations, including to guarantee freedom of religion and to adequately protect religious minorities from threats and attacks. Similarly, Pakistan has not improved its extremely poor record of investigating and bringing to justice members of the security forces and intelligence agencies implicated in human rights violations, or its poor record in protecting journalists from targeted attacks.

## **Sri Lanka: Follow up to the previous review**

At the time of Sri Lanka's first Universal Periodic Review in May 2008, government forces were engaged in a protracted armed conflict with the Liberation Tigers of Tamil

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<sup>68</sup> A/HRC/8/42, recommendation 106.1 (Canada, Greece, Denmark)

<sup>69</sup> A/HRC/8/42, recommendation 106.2 (Portugal, Czech Republic); recommendation 106.3 (Algeria); recommendation 106.4 (Slovenia, Portugal, Germany, United Kingdom); recommendation 106.5 (Mexico, Philippines, Czech Republic, New Zealand); recommendation 106.6 (Luxembourg); recommendation 106.7 (Switzerland, Sweden); recommendation 106.8 (Czech Republic); recommendation 106.9 (Bangladesh).

<sup>70</sup> A/HRC/8/42, recommendation 106.13 (Canada).

<sup>71</sup> A/HRC/8/42, recommendation 106.20 (Albania).

<sup>72</sup> A/HRC/8/42, recommendation 106.28 (Albania, Italy, Philippines).

<sup>73</sup> A/HRC/8/42, recommendation 106.21 (Canada), recommendation 106.23 (Norway).

<sup>74</sup> The Pakistan government invited the Working Group on Enforced or Involuntary Disappearances to the country in September 2012.

<sup>75</sup> Three new human rights institutions have been established by Pakistan following the last UPR. A Human Rights Ministry was established in November 2008. In March 2012 the Senate passed a bill to establish a National Human Rights Commission and President Zardari signed into law the National Commission on the Status of Women Bill 2012

Eelam (LTTE). Four years later, the Sri Lankan government has defeated the LTTE, but has failed to implement commitments made during the first review to enhance human rights protections and to account for past human rights violations. Many of the 2008 recommendations addressed ongoing human rights violations in Sri Lanka and the persistent culture of impunity; the Sri Lankan government supported recommendations to prevent torture,<sup>76</sup> enforced disappearances<sup>77</sup> and extrajudicial killings<sup>78</sup>, and to investigate, prosecute and punish perpetrators of human rights violations<sup>79</sup> – including, notably, to complete investigations into the killing of aid workers.<sup>80</sup> Sri Lanka also supported recommendations to protect the human rights of internally displaced people,<sup>81</sup> to ensure access to humanitarian assistance for vulnerable populations and to protect civilians, including human rights defenders and humanitarian workers.<sup>82</sup>

Within a matter of months following its first UPR, Sri Lanka had broken its promises. In September 2008, Sri Lanka ejected international humanitarian workers from the northern conflict region and launched its final military offensive against the LTTE. According to credible eyewitness testimony, both sides committed war crimes in the final phase of the fighting, including killings and enforced disappearance of civilians and surrendered combatants. In March 2011, the UN Secretary General's Panel of Experts on Accountability in Sri Lanka found credible estimates that as many as 40,000 civilians had been killed in the final phase of the conflict.<sup>83</sup> Sri Lankan artillery hit government-designated civilian "no fire zones" and hospitals, killing medical workers and civilians used as human shields by the LTTE. Those trapped by the fighting were denied access to sufficient food, water and medicine. When the armed conflict ended in May 2009, nearly 300,000 Tamil civilians were detained for months in closed displacement camps, guarded by the army. Some 12,000 people suspected of links to the LTTE were detained separately, and held for extended periods without charge or trial; as of April 2012 hundreds remained in detention. Eyewitnesses told Amnesty International they saw people who had surrendered to the Sri Lankan army being summarily executed. Witnesses also reported that relatives arrested by the army had been forcibly disappeared. Government critics were reportedly also persecuted, and journalists and political activists who criticized the military's treatment of Tamil civilians were attacked or arrested. To date, there has

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<sup>76</sup> UN Document A/HRC/8/46, *Report of the Working Group on the Universal Periodic Review of Sri Lanka*, recommendations 82.16 (Denmark) and 82.19 (Iran).

<sup>77</sup> A/HRC/8/46, recommendations 82.18 (Japan) and 82.27 (Sweden).

<sup>78</sup> A/HRC/8/46, recommendation 82.26 (Canada).

<sup>79</sup> A/HRC/8/46, recommendations 82.17 (Poland); 82.18 (Japan), 82.21 (Sweden), 82.26 (Canada), 82.27 (Sweden), and 82.29 (Greece).

<sup>80</sup> A/HRC/8/46, recommendations 82.15 (United States) and 82.26 (Canada). Sri Lanka accepted a recommendation by the USA to "[e]nsure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry to use its legal investigative powers to their full extent." It also accepted Canada's recommendation that it "[i]nvestigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards." Canada's full recommendation added "in order to combat impunity for human rights violations," which Sri Lanka rejected, and specifically referred to the public hearings of the Commission of Inquiry which implicated members of the Government and security forces in the August 2006 murder of workers of Action Contre le Faim and the January 2006 killing of five boys in Trincomalee, to which Sri Lanka made no comment. (See, A/HRC/8/46 page 6, para. 21.) The ACF case has not been prosecuted despite significant evidence linking Sri Lankan security forces to the killings. The Sri Lankan government has never made public the results of its investigation into the ACF case – one of 16 cases deemed "serious violations of human rights" that were the subject of a Presidential Commission of Inquiry established in November 2006. For more information see, *Sri Lanka: Twenty years of make-believe. Sri Lanka's Commissions of Inquiry*, Amnesty International, 11 June 2009, ASA 37/005/2009, <http://www.amnesty.org/en/library/info/ASA37/005/2009/en>

<sup>81</sup> A/HRC/8/46, recommendations 82.32 (Belgium), 82.33 (Finland), 82.34 (Austria), and 82.35 (Portugal).

<sup>82</sup> A/HRC/8/46, recommendation 82.14 (Canada, Ireland),

<sup>83</sup> Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, p. 41, para 137

been no credible investigation of these claims and no effort to prosecute alleged violators.

In 2012, grave human rights violations continue to be reported, including arbitrary arrest and detention by the police and other members of the security forces, enforced disappearances, and torture and ill-treatment. Many of the victims are Tamils suspected of links to the LTTE, but Sinhalese and Muslim Sri Lankans are also victims. Attacks on journalists and other peaceful critics also continue. Reports of intimidation and smear campaigns against human rights defenders increased prior to the 19th session of the Human Rights Council in March 2012, which passed a resolution calling on Sri Lanka to implement the recommendations of its Lessons Learnt and Reconciliation Commission (LLRC) and address alleged violations of international law.<sup>84</sup>

Sri Lanka has consistently rejected suggestions that it allow an international role in human rights monitoring and accountability efforts, both in the context of its first UPR and subsequently as calls for an independent international investigation into alleged war crimes intensified,<sup>85</sup> and has refused to extend a standing invitation to UN Special Procedures.<sup>86</sup> Amnesty International views such measures as essential to ensuring lasting peace, accountability and reconciliation in Sri Lanka.

Most of the human rights concerns raised by Amnesty International in the context of the 2008 UPR remain unaddressed, and are therefore reiterated in this submission with recommendations for urgent action by the government.<sup>87</sup>

## Ukraine: Follow up to the previous review

During its first Universal Periodic Review in 2008, Ukraine supported recommendations to sign and ratify the Rome Statute;<sup>88</sup> to improve the process for refugee/asylum applicants, to carry out repatriations in line with the principle of *non-*

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<sup>84</sup> Human Rights Council, Nineteenth session, Agenda item 2, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, United States of America: Resolution: "Promoting reconciliation and accountability in Sri Lanka," 8 March 2012, A/HRC/19/L.2, <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G12/115/97/PDF/G1211597.pdf?OpenElement>

<sup>85</sup> A/HRC/8/46, paragraphs 8 and 84. In March 2011 UN Secretary General Ban Ki-moon's Panel of Experts on Accountability in Sri Lanka found credible allegations that war crimes had been committed by both sides in the final phase of Sri Lanka's armed conflict with the LTTE and advised the Secretary General to "immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent functions: (i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings; (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations; and (iii) Collect and safeguard for appropriate future use information provided to it that is relevant to accountability for the final stages of the war, including the information gathered by the Panel and other bodies in the United Nations system." Sri Lanka denounced the Panel and its findings.

<sup>86</sup> A/HRC/8/46, paragraph 11.

<sup>87</sup> Amnesty International assessed the outcome of Sri Lanka's first periodic review in 2008, noting that member states participating raised concerns about the lack of protection of civilians caught in the internal conflict; enforced disappearances, unlawful/extrajudicial killings; torture and other forms of ill treatment, threats to freedom of expression, the need to strengthen national human rights institutions, attacks on dissent and ongoing impunity for human rights violations. Despite Sri Lanka's commitment in 2008 to address some of these concerns through a National Plan of Action on the Protection and Promotion of Human Rights, almost nothing was done. Most of the human rights concerns raised by Amnesty International at the time remain and are therefore included in this submission with recommendations for action by the government to address them. Sri Lanka rejected 26 recommendations made by member states during its first periodic review, nearly half of which urged it to establish an independent human rights monitoring mechanism, in cooperation with the High Commissioner for Human Rights. (See, Sri Lanka: Eighth Session of the UN Human Rights Council: Review of Sri Lanka under the Universal Periodic Review: Amnesty International's reflections on the outcome, June 2008 AI Index: ASA 37/023/2008 (Public).

*refoulement*, and to bring legislation on the determination of the status of refugees and stateless persons in line with international standards;<sup>89</sup> to set up an independent oversight mechanism to investigate torture;<sup>90</sup> to address prison conditions and the treatment of detainees;<sup>91</sup> and to address issues relating to the independence of the judiciary and corruption in the judiciary and the executive.<sup>92</sup>

While Ukraine has made some progress in implementing a number of these recommendations, significant challenges remain as detailed below.

Ukraine signed the Rome Statute of the International Criminal Court on 20 January 2000, but has yet to make the necessary constitutional changes for its ratification. It acceded to the Agreement on Privileges and Immunities on 29 January 2007; however it has not drafted legislation to implement these treaties.

Amnesty International is concerned by the continued failure by the Ukrainian authorities to observe the principle of *non-refoulement* in line with UNHCR guidelines, or to provide full and fair refugee status determination procedures. In March 2011, a group of 10 Afghan citizens, including one child, were returned to Afghanistan without being given the opportunity to appeal against the refusal of their application or their deportation. The group claimed they had no access to interpretation while applying for asylum and that they had to sign documents in a language they did not understand. On 17 March, the State Border Guard Service told regional media that force had been used against some of the men in the group, because they had resisted deportation.

On 8 July 2011, Ukraine adopted a new law on “refugees and persons in need of complementary protection”. This law improves the status of refugees, simplifies documentation for asylum-seekers, and introduces the concept of complementary protection for those who do not fall strictly within the definition of a refugee under the UN Convention Relating to the Status of Refugees. However, it falls short of international standards by not offering complementary protection for reasons of international or internal armed conflict.

Ukraine has failed to set up an independent body to investigate torture, and has also failed to establish an oversight mechanism to prevent torture. The creation of an investigative body has been discussed in parliament as part of the new Criminal Procedure Code (see below), but only in very general terms. Despite being among the first countries to ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in September 2006, Ukraine has not yet established a National Preventive Mechanism. At the time of writing, a proposal is under discussion to establish such a mechanism in co-operation with the Ombudsperson’s office. Ukraine has made little progress in combating torture and ill-treatment in police detention.

The independence of the judiciary is threatened by the fact that the General Prosecutor’s Office retains the power to prosecute judges. On 7 June 2011, the

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<sup>88</sup> Report of the Working Group of the Universal Periodic Review on Ukraine, 3 June 2008 (A/HRC/8/45) recommendation 57.1 (Austria, Mexico, Portugal).

<sup>89</sup> A/HRC/8/45, recommendations 57.29 (United States) and 57.30 (Mexico).

<sup>90</sup> A/HRC/8/45, recommendation 57.20 (United Kingdom).

<sup>91</sup> A/HRC/8/45, recommendations 57.17 (Canada), 57.18 (Netherlands), 57.21 (USA) and 58.4 (Italy).

<sup>92</sup> A/HRC/8/45, recommendation 57.23 (United Kingdom).

Deputy General Prosecutor requested the dismissal of three judges from Kyiv Appeal Court because they had refused a prosecutor's request to detain a suspect on the basis that there were no grounds to hold him. In October 2011, amendments were passed to the 2010 Law on the Judiciary and the Status of Judges in response to criticism that this law, along with other reforms, had seriously reduced the role of the Supreme Court. The amendments, however, only partially reinstated the Supreme Court's role. In Amnesty International's view, the criminal justice system is need of wider reform, as discussed below.