Norwegian NGO-forum for Human Rights

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Recommendations on human rights at the United Nations 2009

These recommendations are submitted on behalf of

Amnesty International Norway
Antirasistisk senter
FoodFirst Information and Action Network Norge
Human Rights House Foundation
International Commission of Jurists Norway
Norwegian Burma Committee
Norwegian Helsinki Committee
Norwegian Mission to the East
Norwegian Organization for Asylum Seekers
Norwegian PEN
Norwegian Peoples Aid
Norwegian Psychological Association, Human Rights Committee
Norwegian Refugee Council
Norwegian Support Committee for Western Sahara
Norwegian Tibet Committee
Save the Children Norway

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Countries and areas

China

Chinese authorities continue to make extensive use of various forms of extra-judicial or administrative detention in which individuals are deprived of their liberty without charge, trial or judicial review. This is a violation of both Article 9 and Article 14 of the International Covenant on Civil and Political Rights, which China has declared an intention to ratify in the near future.

In the Re-education through Labour (RTL) system, an estimated number of individuals between 300,000 and 500,000 are held. Other forms of administrative detention include Custody and Education, for prostitutes and those soliciting prostitutes, and Enforced Drug Rehabilitation.

The RTL system has been used to facilitate the incarceration of common criminals as well as to punish and intimidate activists, human rights defenders, and individuals who practice their religion outside official channels. Despite calls by Chinese reformers and legal experts for its abolition, legislative reform of the RTL system has remained stalled in recent years, and in the run-up to the 2008 Olympics the authorities made increased use of the system to lock up those they believed might disrupt the Games and to "clean up" Beijing prior to the Games. The lack of independent oversight over the RTL system and other forms of administrative detention has engendered widespread use of torture and other ill-treatment to punish or "reform" detainees.

Over recent years Chinese authorities have increasingly use vaguely defined criminal charges, including "subverting state power", "disturbing public order", "endangering state security", and "leaking state secrets", to silence and imprison peaceful activists, including human rights defenders. Defendants charged with such crimes, or others relating to "state secrets", are deprived of many rights, including access to legal counsel of their choosing, access to family and a public trial.

Individual Chinese writers, journalists, and human rights defenders continue to be arrested and sentenced to prison terms for their writings and posting of articles on the Internet. Access to the Internet continues to be closely monitored and censored. New regulations for foreign journalists in China introduced in January 2007, ostensibly gave them greater freedom to investigate news stories; however, the regulations do not apply to Chinese journalists, who continue to work under conditions of tight control and at high risk of prosecution and imprisonment for reporting on sensitive issues.

We call on the Norwegian government to:

- be clear in its criticism of China's use of Re-education through Labour and other forms of detention without trial, and of the persistent oppression of freedom of expression in China.
- call on China to recommence the process aimed at abolishing Re-education through Labour in a way that brings China's detention practice in line with international standards.
- call on China to stop the criminal prosecution and other harassment of human rights defenders solely for their peaceful activities to promote and protect human rights.
- call on China to secure full freedom of expression and information, including freedom of dissemination of, and access to, information on the Internet, especially in view of the development of new legislation concerning Chinese media and journalists.
- support any initiatives at the United Nations to secure freedom of expression and information on the Internet.

Middle East: An international criminal process

When addressing the *Ninth Special Session of the Human Rights Council on The Grave Violations of Human Rights in the Occupied Palestinian Territory including the recent aggression of the occupied Gaza Strip*, on 9 January, the UN High Commissioner for Human Rights, Ms Navi Pillay, called for accountability to be ensured for violations of international law and as a first step, that credible, independent and transparent investigations be carried out.

The conflict in the Middle East has been extremely violent, frozen and long-lasting. A number of peace attempts have been made, but until now, they have all failed. The international community has clearly expressed that the strategies of the parties have not helped create a platform on which to build peace: The occupation of the Palestinian territories has been condemned internationally, in particular in several UN resolutions, while international reactions against Hamas' policies, the hate speech and its political charter, have been strong. Additionally, the conflict within the Palestinian authority has created hopelessness and frustration.

New measures are needed. Democracy and the rule of law must be developed side by side. This requires an international criminal process for independent enforcement of the rule of law to address serious crimes, including crimes against humanity and war crimes. Such a process must ensure the enforcement of international law and independent investigations and proceedings directed towards individuals on any side of the conflict, without prejudice to political interests and military solutions.

We call on the Norwegian Government to

- promote that an international criminal process take place to bring individuals to account for crimes against humanity and violations of international humanitarian law during the recent excessive violence in the Middle East, December 2008 – January 2009.

Georgia

The armed conflict in South Ossetia in August 2008 caused devastation of homes communities and lives in South Ossetia and bordering districts in Georgia. Georgian forces attacked the region on 7 August 2008 in an attempt to take control over the breakaway area that has strong ties with Russia. Russian forces soon responded, and in the following days hundreds of civilians were killed, property destroyed and tens of thousands of people displaced.

Independent organizations' investigations into these events have disclosed that Georgian and Russian forces as well as South Ossetian militia violated international humanitarian law. It has been reported that Georgian and Russian forces used indiscriminate force, causing death and injury to civilians. There is reason to believe that Georgia made use of cluster munitions, which is banned under international law.

After establishing military control, Russia failed to ensure public order and safety for civilians, which is an obligation under International Humanitarian Law. Armed criminal gangs and Ossetian militia may be responsible for abductions, of terrorizing the civilian population, forcing them to flee their homes, and preventing displaced persons from returning. About 22 000 ethnic Georgian villagers remain displaced to date. The scale of this operation makes it appear as an attempt at ethnic cleansing. The perpetrators of the actions may be prosecuted for crimes against humanity.

The Georgian attack against South Ossetia took place against a backdrop of a worrisome decrease in the respect for human rights standards and the undermining of the principle of division of powers, demonstrated by a corrupted court system, flawed elections and strict limitations on the freedom of the press in Georgia.

We call on the Norwegian government to call on the Russian and Georgian governments to:

- investigate and hold accountable those among their forces and other persons acting in the areas of their effective control, responsible for violations of international criminal law. In accordance with international standards, investigations should be prompt, thorough, independent, impartial, and open to public scrutiny.

- provide compensation for damage and destruction caused by violations of international humanitarian law.

- cooperate fully with the international organisations and inquiries by providing full, unimpeded access to all areas and access to all relevant persons and information for all of the inquiry's experts and staff.
- for the Russian Federation to ensure the right of all persons displaced by the conflict, including ethnic Georgians, to return and live in their homes in South Ossetia and Georgia to take all measures to ensure the protection of and continued assistance to all persons displaced as a result of the conflict
- for Georgia to ensure that courts work fully independently, to lift restrictions on the press and respect the principle of division of powers.

India: Discrimination and persecution of religious minorities

Tensions between the majority Hindu population and minority religious groups, which have always existed in India, have escalated in the last decade, with an increase in acts of violence. This trend seems to be related to the growth and expansion of radical Hindu movements espousing a radical religious nationalistic ideology, Hindutva, as well as to the empowerment of the Dalits (formerly 'untouchables') and other Scheduled Castes and Tribes.

Christian groups are increasingly reviled by Hindu extremists for their alleged 'conversion activities', which are seen to undermine the Hindu-based caste system. Although the caste system exists to some extent within every religious group, conversions are traditionally seen by Dalits as a means of emancipation from the identity imposed upon them by their caste. Religious conversions are increasingly obstructed by legislation such as the Orissa Freedom of Religion Act of 1967 (OFRA), and widespread attacks are perpetrated against Christians at the hands of Hindu extremists in many states across the country.

In Orissa in August 2008, a series of well-planned and coordinated attacks were carried out against the minority Christian community. Nearly 5,000 buildings belonging to Christians were damaged or destroyed. 54,000 Christians were displaced and 118 people confirmed killed. The rampant violence did not come to a halt until October when the national government sent in its Central Reserve Police Force.

As of May 2009, most victims have yet to receive compensation for the loss of their property, and those who have, have not received it to an adequate degree.

We call on the Norwegian government to:

- encourage the Indian government to maintain the Central Reserve Police Force in Orissa and to encourage Indian authorities to ensure that speedy and just remedies are provided for the victims of the atrocities perpetrated in Orissa and other states during the time period 23 August until October 2008.

- encourage Indian authorities to repeal the Orissa Freedom of Religion Act of 1967 (OFRA) and other similar anti-conversion laws in other states in India.
- ask the government of India to release the report by the ad hoc National Commission for Religious and Linguistic Minorities commissioned by the Ministry of Minority Affairs and submitted to the PM's office in May 2007.
- encourage India to cooperate with CERD in its recommendations concerning caste and caste related discrimination and implement the recommendations of the Special Rapporteur on Freedom of Religion or Belief after her visit to India in 2008.

Russian Federation

The human rights situation in Russia is deteriorating. Domestic critics of this trend, notably the media and human rights NGOs, are under severe pressure. Laws inhibit the work of human rights NGOs and other human rights defenders. Killings, attacks and harassment of human rights defenders, especially in the North Caucasus region, as well as interference in the work of independent and well-respected human rights NGOs are alarming and unacceptable.

Russian mass media, especially television, remains under state control; there is a high degree of control on editorial content. The number of journalists subjected to criminal prosecution (e.g. under art 129) for expression of political views or for criticizing the authorities is increasing. A number of journalists have been beaten, kidnapped, tortured and imprisoned, apparently for the expression of non-violent views. A number of unsolved assassinations of human rights defenders, witnesses and journalists raise serious concerns of impunity and of a lack of a proactive government policy to protect human rights defenders and journalists.

In several important cases, the European Court of Human Rights has held Russia responsible for extremely grave violations of human rights during its counter-terrorist operation in North Caucasus. Russia has paid compensations to the victims, but has failed to implement the judgments in a manner that would prevent similar violations from occurring again. Witnesses in such cases are increasingly at risk.

We call on the Norwegian government to:

- urge the Russian Federation to respect freedom of association in general, to repeal legislation pertaining to NGOs which conflict with international human rights standards, to immediately halt persecution of human rights defenders and honour its obligations to protect and support human rights defenders.
- urge the Russian Federation to respect the rule of law and to actively prosecute any alleged violations of human rights and international humanitarian law, to end impunity for crimes such as forced or involuntary

disappearances, killings or torture. In particular, urge the Russian Federation to end the harassment of, and to actively protect witnesses in proceedings where such violations are being addressed, and their families.

- urge that a legal process for grave violations of human rights and humanitarian law committed in Chechnya and neighbouring regions is established, in accordance with the Parliamentary Assembly of the Council of Europe resolution no 1323 (2003), and that in addition all relevant international mechanisms to document and respond to abuses are utilized.

Thematic recommendations

Combating defamation of religions

We are concerned about UN- Human Rights Council resolutions which apparently aim to freedom of speech, especially criticism of religions, notably resolutions 10/22 "Combating defamation of religions" and 7/36 "Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" - which were passed by the Human rights Council at its 7th and 10th sessions.

Resolution 10/22 "[u]nderscores the need to combat defamation of religions" and calls on states to take measures to this end, some of which may be contrary to freedom of expression, as defined by international human rights law. It is not acceptable to restrict freedom of expression to protect particular institutions or abstract notions, concepts or beliefs, including religious ones.

Within the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of expression, there are elements apparently aiming to move the focus away from the protection of the right to free expressions into monitoring such expressions in stead. Consequently, criticism of, or expressions perceived as criticism of religions, may enjoy lesser protection from the UN Human Rights Council and its Special Procedures, contrary to the obligation of the Council to protect freedom of expression. We have however taken positive note of the recent report (30 April 2009) of the Special Rapporteur and welcome his principled defense of international human rights law. In particular we would like to highlight that he and other mandate holders have encouraged the General Assembly and the Human Rights Council "to desist from further adoption of statements supporting the idea of defamation of religions" (A/HRC/11/4).

We call on the Norwegian government to strongly support that:

- freedom of expression must not be curtailed based on the notion that religions, religious groups or religious individuals need a special protection.
- free, democratic societies, based on universal, democratic principles, must encourage free and open debate, allowing for criticism of religions as well as political institutions and authorities.

Human Rights and Business

We welcomed the establishment, in 2005, of the mandate of the *Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises* (SRSG). We appreciate his constructive progress, particularly as reflected in his third and forth reports, submitted to the UN Human Rights Council for its 8th and 11th sessions, and welcome the resolution adopted by

the Council in June 2008, extending the mandate of the SRSG for a further three years to develop his proposals.

We believe that the policy framework, which emphasizes three key principles - the state duty to protect in the context of corporate human rights abuses; the company responsibility to respect all human rights; and access to remedies, has the potential to make an important contribution to the protection of human rights.

We would welcome greater emphasis on mechanisms for holding companies accountable for their negative impacts on human rights and on means of ensuring that appropriate sanctions are imposed. Such accountability mechanisms may involve, as appropriate, criminal, civil, or administrative sanction and will have to confront the challenges outlined in the report, including those related to company structure and trans-national operations.

We welcome the recommendation that states should strengthen judicial capacity to hear complaints and enforce remedies. Ensuring that states can more easily and effectively address abuses that occur within their jurisdictions is critical. This should include reform of domestic legal frameworks where necessary. For example, states should be encouraged to make the legislative changes necessary to enable "class action" or other collective suits.

In respect of human rights violations and abuses, all persons have a legal right to an effective remedy. While recognizing that non-judicial mechanisms can have a role to play, "soft mechanisms" such as OECD national contact points (NCPs) and grievance mechanisms voluntarily established by companies have inherent limitations. Non-judicial mechanisms should not be used as a pretext by governments to ignore their obligations to provide an effective remedy, nor used by companies to avoid appropriate regulatory actions. They must not be seen as a substitute for judicial mechanisms. However, as the SRSG noted in both his second and third reports, states tend to address the human rights impacts of companies within the confines of relatively weak institutional frameworks or voluntary initiatives like the Global Compact. We are concerned that both states and companies use such mechanisms to deflect calls for initiatives that could advance corporate accountability and access to justice.

We call on the Norwegian government to:

- promote that within the context of the State duty to protect some elements of corporate human rights due diligence measures should be mandated by law.
- promote that it should be mandatory for state investment support mechanisms to ensure appropriate due diligence and monitoring in relation to the human rights impacts of investment projects, and that appropriate sanctions are built into such systems.

- call upon the SRSG to build on the recommendation that UN Treaty Bodies are increasingly encouraging states to give effect to the duty to protect beyond their borders in certain circumstances, including in relation to the actions of companies. This is critical to adapting the human rights regime to provide more effective protection to individuals and communities against corporate-related human rights harm.
- encourage the SRSG to look at the role played by private military security contractors, both in the context of conflict-affected areas and beyond. The role played by these companies, and the fact that they have, in several cases, been contracted by States, raise specific accountability issues. It is important to underline that a State cannot "contract out" of its human rights responsibilities by engaging a private actor to carry out security tasks.
- promote the concept of a supra-national institutional structure such as an Ombudsman, mentioned in the report of the SRSG to the 8th Session of the Council.

Protection of refugees and human rights

How international refugee law is practiced has great implications for the protection of individuals from human rights abuse. We are therefore concerned about practices that restrict the possibility to submit applications for asylum and have applications handled in a legally safe procedure.

It has been reported that the navy in Thai territorial waters between 18 and 30 December 2008 intercepted around 1000 boat refugees from the Muslim Rohingya minority. The refugees were allegedly arrested and beaten by Thai officers before they were towed into international waters in boats with no engines and without sufficient food and water. Hundreds are missing and feared drowned, while Indonesian and Indian coastguards rescued others.

At a systemic level, we are concerned that the European Union in recent years has increasingly focused its asylum and migration policies on combating irregular entries and deferring responsibility for individuals at risk of persecution, through such instruments as visa policies, sanctions against air carriers carrying undocumented passengers, interception at sea and diversion to third countries. Individuals fleeing persecution have no more means of legally entering the EU than any other category of person. As a result, refugees take life-threatening risks in desperate attempts to reach protection in Europe, frequently at the mercy of human traffickers or other criminals.

Even refugees who actually succeed in reaching a European country are not guaranteed a legally safe procedure, as some countries do not allocate sufficient resources for handling the applications. Under the Dublin II regulation only one country within the area makes a decision on an application for asylum. As a result, resourceful countries in Europe return applicants to countries without legal security, ultimately in danger of *refoulement*.

While it is necessary to retain the focus on traditional sources of refugee flows, the impact of climate change needs to be understood and addressed proactively from a human rights perspective. Successive reports of the Intergovernmental Panel on Climate Change have authoritatively established that human induced climate change is accelerating. The First Assessment Report (1990) of the Panel noted that the greatest single impact might be on human migration and displacement. Climate change potentially impinges on a range of human rights, including the right to life, adequate food, water, health, adequate housing, and rights relating to displacement such as the right not to be arbitrarily displaced. As states may be unwilling or unable to protect, or even directly violate human rights in this context, refugee flows could follow. Persons moving voluntarily or forcibly across international borders due to environmental factors would be entitled to general human rights guarantees in a receiving State, but would be at risk of being denied a right of entry into that State, legally as well as practically.

From a human rights perspective it is also crucial that the international community agree to effectively deal with the causes of human induced climate change at the UNFCCC in Copenhagen in December this year.

We call on the Norwegian government to:

- promote the obligation of all States to effectively ensure the right to seek asylum and to secure international protection of people in need of such protection.
- appeal to the Thai Government not to return people who seek safety, such as the Rohingyas without ensuring proper respect for the non-refoulement principle in international law and to sign the Refugee Convention and the 1967 Protocol thereto; and to seek regional cooperation for reaching a permanent solution for the Rohingyas in particular and other in need of international protection in general.
- promote that people in need of international protection are not denied access to European territory and that border management secures that no asylum seeker is sent back at the border to a risk of persecution.
- practice the Dublin II regulation in a manner that ensures that refugees are not returned to other European countries if their legal safety is not guaranteed and practice Dublin II only in full compliance with the 1951 Refugee Convention. Other European States should be called to follow the same principles.
- promote that in the case of individuals seeking international protection due to environmental factors, if refugee status is deemed inapplicable in situations of cross-border displacement, States must still ensure that migration management systems provide for the entry and protection of those in need. If return is not permissible, not possible or not reasonable due to human rights

and/or circumstances in the place of origin and personal conditions including particular vulnerabilities, a cross-border displaced person should receive either temporary or complementary/subsidiary protection.

Rule of law, human rights and counter-terror measures

The past eight years must rightfully be described as paradigmatic with relation to rule of law and counter-terrorism measures. The damage done to the human rights framework has been profound. Seven years after 9/11 it is time to repair this damage and to ensure a viable counter-terrorism response, in which the respect for human rights, the rule of law and accountability are the key.

The shift from the criminal justice system to preventive mechanisms such as deportation, administrative detention, control orders and terrorist listings, presents a huge human rights challenge. A reconsideration of the development also within the criminal justice system must however take place: broadly defined terrorism offences, and a variety of fair trial issues such as the militarization of justice, use of special courts and limitations of access to courts and lawyers are only a few of the issues to address.

In this wider process, shutting down the detention centre at Guantanamo Bay is not only a major step towards restoring respect for human rights and rule of law on the part of the U.S. administration, it is also a highly symbolic act. As such, it warrants both assistance and support from European governments.

We call on the Norwegian government to:

- address and promote the restoration of rule of law in the counter- terrorism context in all available international fora.
- put particular emphasis on the need for immediate access to all places of detention for the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and similar access for other international supervisory bodies and mechanisms.
- advocate support for the work of the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism.
- co-operate with and support the USA in the forthcoming challenges related to the closing down of the detention centre at Guantanamo Bay.

Sexual minorities and human rights

Persecution and discrimination based on sexual orientation or gender identity are widespread around the world. Many people face violence because of their sexual orientation or gender identity, and are not protected by government officials. Many countries still prohibit by law sexual relations between persons of the same sex. In some countries people risk detention on the basis of their sexual orientation or

gender identity, and there are several reports of ill treatment or torture in police custody.

We call on the Norwegian government to promote and support that:

- adequate protection of human rights defenders at risk because of their work on human rights for sexual minorities, must be ensured.
- all Special Procedures of the Human Rights Council give due attention within their mandates to human rights violations based on sexual orientation and gender identity.
- the mandate of the UN Special Rapporteur on the situation of Human Rights Defenders is strengthen, and define Human Rights Defenders as persons who address any human rights concern, including any person who promote and protect human rights for sexual minorities.