

Vulnerability as a Concept of International Human Rights Law



INTRODUCTION

IN THE CONTEXT OF HUMAN RIGHTS¹ AND, IN PARTICULAR, OF THE RIGHT TO DEVELOPMENT, THE TERMS “VULNERABLE” OR “VULNERABILITY” ARE OFTEN USED TO DESCRIBE SEGMENTS OF THE POPULATION WHICH ARE OR SHOULD BE THE RECIPIENTS OF EXTRA CARE AND ATTENTION. That is the case, for instance, in discussions about those who are denied access to the basic needs for survival² and live in poverty,³ not infrequently called socially vulnerable groups.⁴ The current HIV/AIDS and human rights debate also focuses on groups affected by or particularly vulnerable to that disease — for instance children⁵ — and seeks to devise strategies to single them out as the beneficiaries of particular support without, however, allowing measures that adversely affect the basic rights and freedoms of vulnerable groups.⁶ By the same token, previous discrimination is often the reason for vulnerability triggering a need for affirmative action aimed at the promotion of rights, for instance in education.⁷

This article seeks to look at the concept of vulnerability from a different angle or, rather, to investigate whether such a concept exists or is emerging. Its focus will mostly be on the core of tradi-

tional first-generation human rights — civil and political rights — and the various treaties safeguarding them through monitoring and adjudication procedures. Is there a recognisable attitude of these human rights bodies and tribunals to qualify particular (groups of) complainants as vulnerable, what are the criteria applied, and what are the consequences of such a qualification?

This is not the place for a comprehensive exploration of the wealth of materials available. Instead of a systematic analysis, the following observations will attempt to roughly structure the practice and provide some tentative answers to the questions outlined above.

CLASSIFICATION CRITERIA

AS ONE MIGHT EXPECT, NEITHER INTERNATIONAL LEGAL TEXTS NOR PRACTICE HAVE SHOWN A TENDENCY TO DEVELOP A DEFINITE CATALOGUE OF WHICH GROUPS ARE VULNERABLE. However, the choices of international lawmakers when it comes to adopting specialised human rights conventions addressing the rights of particular groups may be said to be indicative of the realisation that they deserve special attention on account of

their vulnerability. Not infrequently, we encounter a parallel or consecutive adoption of instruments addressing the very same topic at the universal and regional levels (one example of many is the CRC of 1989 and the 1996 CoE Convention on the Exercise of Children's Rights⁸), or within various regional organisations; this also extends to parallel or consecutive non-binding texts.

These texts may then either mirror one another or be tailored to fit the specific needs or legal realities of the region or institution; the UN Standard Minimum Rules for the Treatment of Prisoners of 1955⁹ and the subsequent 1973 CoE Standard Minimum Rules¹⁰ and 1987 European Prison Rules¹¹ may be evidence of this approach. Even in less specialised international instruments, general references to specific groups are frequent. The new European Code of Police Ethics is a telling example:

*Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.*¹²

Notwithstanding the absence of a catalogue, the practice has so far identified a broad range of categories and sub-categories of vulnerable individuals. Several of them will not come as a surprise, such as women, children, prisoners, deportees, and the like. Other categories are less obvious, for instance judges. In addition, we will even have to consider whether, in the framework of human rights protection, there can be vulnerable states. The more exciting aspect of the search for a concept of vulnerability is the combination of certain criteria: juvenile prisoners are a classic example. We will encounter much more complex combinations of criteria, the 'PRE-TRIAL DETAINEE who suf-

fers from a MENTAL DISORDER,' for instance, combining three criteria.

The list of categories that will be developed *infra* is by no means exhaustive. Even less final will be the tentative conclusions as to what the consequences of the (combination of) criteria approach are. For instance: does a pre-trial detainee who suffers from a mental disorder deserve a higher standard of protection than a convicted criminal with a similar health problem? What about a pre-trial detainee who suffers from a physical handicap compared with one who is mentally handicapped?

One should not hope to extract from the practice a set of rules of universal applicability. A tendency is the most we can reasonably expect. Probably the clearest set of guidelines stem from the human rights bodies applying their own procedural rules to petitioners whom they — for whatever reason — categorise as vulnerable and treat favourably in the context of, in the first place, the requirement to exhaust domestic remedies. That aspect will be dealt with at the end of this article.

A LIST OF THE PARTICULARLY VULNERABLE?

ONE ENCOUNTERS RELATIVELY FREQUENTLY LISTS OF INDIVIDUALS OR GROUPS WHO ARE CHARACTERISED AS VULNERABLE IN INTERNATIONAL DOCUMENTS. Most, if not all, are tailored so that they fit the particular right or topic that is addressed in the document, such as (and these are merely random examples) those contained in the Convention of Belem do Para:

States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic

*background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.*¹³

... and in the CESCR's 1997 General Comment 7:

*Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction.*¹⁴

Most lists also contain an "other" clause to indicate unequivocally that they are not intended to be exhaustive. None, it seems, was ever motivated by the desire to elaborate a concise catalogue of who is to be regarded as vulnerable from the perspective of human rights law in general. Such a master-list may well be impossible, or even counter-productive, to compile.

A preliminary evaluation of the sources reveals that the following general categories of distinguishing criteria defining the vulnerable can be filtered out:

- age (comprising children, adolescents, the elderly *etc.*);
- sex (women, including those who are pregnant, ill, involved in armed conflict *etc.*, girls, but also transsexuals);
- ethnicity, sometimes intertwined with residency status (minorities and indigenous peoples, the rural population, people living on islands, or people living in disaster-prone areas¹⁵);
- health status (physically and mentally handicapped people, the terminally ill *etc.*);
- liberty status (detainees and prisoners under whatever regime of deprivation of liberty); and

- other status (a diverse group encompassing, for instance, landless persons, foreigners, refugees and asylum seekers, deportees, the homeless *etc.*).

It should be noted that these categories have not expressly been developed by international bodies, but have been chosen by the author to offer a rudimentary structure for future discussion. This is not to suggest that the categories represent the most vulnerable. The attempt at categorisation also leaves out many individuals, groups and situations which can only be called miscellaneous, since they share few characteristics to safely identify them as vulnerable.

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THE CRITERIA, THEIR COMBINATION, AND THE CONSEQUENCES

THE FOLLOWING SECTION SEEKS TO FURTHER DEVELOP THE CONCEPT OF VULNERABILITY BY EXTRACTING SOME PRINCIPLES UTILISED BY HUMAN RIGHTS BODIES WHEN IT COMES TO IDENTIFYING AND DEFINING THE PARTICULARLY VULNERABLE AND DEVELOPING APPROPRIATE RESPONSES TO TAKE INTO ACCOUNT AND ALLEVIATE THEIR GRIEVANCES IN LIGHT OF SUCH A DETERMINATION. Let us look at some examples where criteria belonging to the broader general categories we have identified above are combined:

THE AGE CRITERION: CHILDREN

The Inter-Am.Comm.H.R. has rightly based the special vulnerability of children on 'their status and inability to secure the protection of their own rights.'¹⁶ Consequently, and much in line with the CRC which, in its preamble, speaks of special care and assistance,¹⁷ states have 'a special duty to protect children and to ensure that, whenever state authorities take acti-

ons that may in any way affect a child, special care is taken to guarantee the child's rights and well being,⁷⁸ as the Inter-Am.Comm.H.R. has emphasised.

At the universal level, Article 3 of the CRC reflects that by stipulating the general rule that in 'all actions concerning children, the best interests of the child shall be a PRIMARY consideration.'⁷⁹ While children as such are deserving of an elevated level of human rights protection, there are countless particularly vulnerable and disadvantaged⁸⁰ sub-groups of children who are the special focus of the attention of human rights bodies when it comes to implementing certain rights, or implementing them in certain geographical regions or in some other specific context: 'children living in conflict areas, institutions, rural/remote regions, poverty, children in conflict with the law, street children,⁸¹ children affected by HIV/AIDS, and refugee/internally displaced children,⁸² 'children with disabilities; children living in poverty; ... children born out of wedlock; teenage mothers; sexually abused children; ... and children living in isolated island communities,⁸³ 'children of single-parent families,⁸⁴ 'children belonging to ethnic minority families,⁸⁵ 'Roma children,⁸⁶ 'girls, ... nomads and orphans,⁸⁷ 'children in public care,⁸⁸ and homeless children.⁸⁹ These and other particular groups 'may be especially vulnerable to experiencing disparities in the enjoyment of their rights,⁹⁰ as the CRC puts it.

From this exemplary list alone one can see how interrelated the various criteria are. Starting from age as the basis, sex (girls, but also teenage mothers), general status (legitimacy), and ethnicity criteria (ethnic minority families) appear as qualifying factors to elevate particular (groups of) already vulnerable children to the status of even more vulnerable. Other criteria may have an equal bearing on the process of establishing increased vulnerability.

Factors such as health (children with disabilities or suffering from HIV/AIDS), family background (single-parent families), place of living (children living in rural areas), voluntary (nomads) as much as involuntary relocation (refugees) to name but a few can have an impact on how groups are viewed.

Does the practice allow us to deduce some kind of hierarchy of vulnerability of groups or categories of children? The choice of words of the various human rights bodies when assessing specific scenarios can be indicative, even though one must bear in mind that the term particularly vulnerable is not infrequently used merely to signal vulnerability but not a higher degree thereof. Street children, for instance, have been characterised as 'EXTREMELY vulnerable to acts of abuse and violence'⁹¹ throughout the universal and regional systems of human rights protection.⁹² In a way, their vulnerability has even been quantified, either by statistics⁹³ or by enumerating the multiple risks street children face.⁹⁴ Similarly, children with disabilities who, of course, constitute a typical group with combined characteristics (age and health status) have been characterised as 'ESPECIALLY vulnerable to exploitation, abuse and neglect.'⁹⁵

International bodies also tend to indicate that they rank groups according to the level of vulnerability attributed to them by firstly noting the special status of children in general and then singling out one particular group of children as particularly vulnerable. In that case, the term particular is actually used to differentiate, as the example of disabled children in various CRC documents demonstrates.⁹⁶ Occasionally, one may encounter an accumulation of particulars in a text whereby the respective body seeks to make it unequivocally clear that it regards the sub-category concerned as deserving exceptional care and attention.⁹⁷ These

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rankings, however, obviously serve the sole purpose of an *intra*-document differentiation and should not — at least not automatically — be regarded as conclusive evidence that a group is thus raised to a higher level of vulnerability on a general scale.

But protective measures potentially limiting the exercise of the rights of others in favour of children in general are also frequent and not necessarily suspicious either, even if they occasionally limit the rights and freedoms of others, and may well be mandated by human rights law itself. The Eur.Comm.H.R. has found that a law making punishable assault and molestation was 'a normal measure for the control of violence and that its extension to apply to the ordinary physical chastisement of children by their parents is intended to protect a potentially weak and vulnerable member of society.'³⁸ Children are thus entitled to 'effective deterrence against ... serious breaches of physical integrity,'³⁹ as the Inter-Am. Comm.H.R. has said. Another relevant example is the testimony of children in judicial proceedings. States have argued before universal and regional bodies that the practice of modifying the rules in favour of vulnerable witnesses was acceptable or even mandated by human rights law,⁴⁰ and these bodies have not categorically ruled out that possibility;⁴¹ a recent example of such a standard is the 2001 CoE instrument on the Protection of Children against Sexual Exploitation which requires states to provide 'special conditions for the taking of evidence from children who are victims of or witnesses to sexual exploitation.'⁴²

In the given context, the practice does not seem to support the conclusion that the combination of criteria *per se* creates sub-categories of children who, by virtue of their particular vulnerability, are to be treated favourably in every respect. In

other words, we cannot conclude that a general, objective ranking of the degrees of vulnerability is taking place that allows us to draw up a positive list of priority focus groups which state-parties to the various human rights treaties have to pay attention to, in the first place. What is apparent, however, is the need to identify the more vulnerable children with respect to each and every of the rights concerned and to focus the attention of state agencies on them.

Let us now look at another example, namely the deprivation of liberty status, in order to assess whether that offers more evidence that an objective ranking is in fact taking place.

THE LIBERTY STATUS CRITERION: PERSONS DEPRIVED OF THEIR LIBERTY

Common Criteria

All forms of deprivation of liberty, including arrest by the police,⁴³ share the common feature that the people subject to such a regime are more vulnerable than those at liberty⁴⁴ and prone to becoming the victims of either 'arbitrary treatment and infringements of their personal integrity and dignity'⁴⁵ or even a systematic violation⁴⁶ of their human rights.

The field of deprivation of liberty is a prime example of how criteria are combined to distinguish within a category. Persons detained unlawfully, for instance, have been considered more vulnerable than those held in accordance with the law.⁴⁷ Human rights bodies will not hesitate to second-guess why certain people end up behind bars. The Inter-Am. Comm. H.R. 2001 assessment of the situation in Guatemala is a fine example:

Because the poor and otherwise marginalized sectors of society are often at a disadvantage with respect to the right to legal

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*counsel and other means to safeguard their rights, they are in a situation of special vulnerability. This vulnerability is manifested in the numerous cases of poor people, especially indigenous inhabitants, who are detained for minor infractions.*⁴⁸

If one seeks to draw up a general list of particularly vulnerable prisoners, the best source today is the CPT's extensive reporting practice. The Committee has formulated the general rule that the 'position of specially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards.'⁴⁹ That list is clearly not exhaustive and the CPT and other European bodies have occasionally added other categories of persons deprived of their liberty for various causes to it. For instance, inmates held in remand for prolonged periods of time,⁵⁰ foreigners,⁵¹ women, and drug addicts,⁵² mothers with children,⁵³ sex offenders,⁵⁴ 'those under the influence of drugs, alcohol, medicine, or who are in a state of shock,'⁵⁵ or those who are blindfolded,⁵⁶ and has hinted that people may be particularly vulnerable in specific situations such as whilst in transit.⁵⁷ Other, non-European bodies have contributed further criteria such as an increased risk of mistreatment of prisoners during the first few days of detention and while they are held *incommunicado*⁵⁸ — which, in itself, may amount to cruel and inhuman treatment.⁵⁹

Degrees of Vulnerability of Detained Persons and Positive Duties Stemming from the Classification

The Eur.Ct.H.R. said in the 2001 *Keenan* case that 'persons in custody are in a vulnerable position and that the authorities are under a duty to protect them.' Therefore, it 'is incumbent on the State to account for any injuries suffered in cus-

tody ...'⁶⁰ The duty means, in the first place, that prison officials 'may not allow those deprived of liberty to be persecuted by other inmates. The measure required is proper oversight to prevent the occurrence of such incidents, and to ensure that those that occur are subject to rapid, just measures of discipline.'⁶¹ When placing detainees in cells together, for example, the authorities must take into account the individual's dangerousness and vulnerability, respectively.⁶² The CPT has at least once demanded 'a reception procedure [which] should be used as an opportunity to identify detainees who may be especially vulnerable and to allocate them to living accommodation within which they can be adequately protected.'⁶³

Rule 11 (1) of the European Prison Rules provides us with fairly precise hints as to which inmates may be deemed vulnerable, and from which ones they should be protected: 'In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.' These principles have guided the CPT in its assessment of country conditions.⁶⁴

While these rules apply to all detainees, the more vulnerable ones may demand more positive action from the prison management. The implications of such a rule become most apparent in the case of mentally ill and mentally handicapped people who 'are particularly vulnerable and should therefore benefit from safeguards in order to prevent any form of conduct — or avoid any omission — contrary to their well-being.'⁶⁵ With respect to the mishandling of a mentally ill person which led to his suicide, the Eur.Ct.H.R. in *Keenan* found that 'the authorities are under an obligation to protect the health

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of persons deprived of [their] liberty ... The lack of appropriate medical treatment may amount to treatment contrary to Article 3 ... In particular, the assessment ... has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment.⁶⁶

However, this elevated level of protection is not unique to cases of mentally ill individuals but can and has been applied with equal strength to other vulnerable detainees, such as those 'placed under a solitary confinement regime.'⁶⁷ In that case, it is not the particular situation of the person concerned (which the prison management is not responsible for, nor able to change), but the special status he or she is given under the prevailing prison regime. Here, the authorities themselves cause a factual situation that may make the individual particularly vulnerable and, consequently, they bear a higher degree of responsibility for their well-being.

Finally, the vulnerability of certain people deprived of their liberty may cause the prison management to simply separate them from the general prison population to keep them safe. However, as the CPT has made clear, such a solution cannot be tolerated for a simple reason. Certain rights of prisoners provided for in international standards are a bare minimum and must be safeguarded under any circumstances; among them is the right to at least an hour of outdoor exercise each day.⁶⁸ Even if the prison administration rightly identifies certain individuals as vulnerable, for instance sex offenders, their status cannot mean that they may be deprived of these minimum rights in order to protect them from harm. Rather, the prison management is under an obligation to take other adequate steps so that such people can exercise their rights while their physi-

cal integrity is being safeguarded.⁶⁹

From this brief overview of practice one may tentatively conclude that the deprivation of liberty criterion lends itself better to categorisation than the age criterion, which we have examined in the case of children. The CPT, in particular, but also the various standard minimum rules themselves, have succeeded in filtering out classes of particularly vulnerable individuals and have accorded them suitable rights and guarantees (accompanied by corresponding state duties) to remedy the consequences of their increased vulnerability. It seems arguable that the prison environment, despite the different forms of deprivation of liberty and the undoubtedly countless rights at issue there, more resembles a closed system than an age group encompassing the entire population.

We will now consider a third example for the criteria outlined above. Since ethnic groups may be said to combine characteristics of both groups examined before, *i.e.* they span the entire population, like children, but are a much narrower group with interests in particular kinds of human rights, like persons deprived of their liberty, the ethnicity criterion is chosen for that purpose.

THE ETHNICITY CRITERION: MEMBERS OF MINORITY GROUPS AND INDIGENOUS PEOPLES

Recent practice (probably influenced by the emergence of new, specialised treaties, in particular in Europe,⁷⁰ and of non-binding instruments at the universal and regional levels⁷¹) indicates that human rights bodies and tribunals have become increasingly sensitive to the special status of minorities and indigenous peoples. The Inter-Am.Comm.H.R. reasoned in 2000 that poverty 'tends to have disproportionately grave effects on indigenous popula-

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tions. These populations are generally among the most vulnerable and dispossessed groups in society.⁷² It has also spoken of their fragility.⁷³

The term members of ethnic minorities routinely appears in texts regulating the conduct of law enforcement agencies alerting them to that group's special status and needs,⁷⁴ and as an additional qualifying factor when the vulnerability of certain sub-groups is established, such as children of minority families⁷⁵ or minority women.⁷⁶ In *Chapman* and several related British Gypsy cases, the Eur.Ct.H.R. echoed the concerns voiced by various international bodies about the vulnerability of Roma to, for instance, long-standing discrimination, but also economic crises⁷⁷ and found that 'the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle.'⁷⁸ However helpful the Court's departure from the material consideration or absence-of-disregard⁷⁹ test previously employed by the Commission and the elaboration of the special consideration standard, that alone cannot alleviate the concerns about the overall approach taken by the Court in matters relating to serious human rights violations to the detriment of members of racial or ethnic minorities. This was voiced quite eloquently by Judge Bonello in his partly dissenting opinion appended to the June 2002 *Anguelova v. Bulgaria* judgment:

I consider it particularly disturbing that the Court, in over fifty years of pertinacious judicial scrutiny, has not, to date, found one single instance of violation of the right to life ... or the right not to be subjected to torture or other degrading or inhuman treatment or punishment ... induced by the race, colour or place of origin of the victim ... Frequently and regularly the Court acknowledges that members of vul-

nerable minorities are deprived of life or subjected to appalling treatment ...; but not once has the Court found that this happens to be linked to their ethnicity. Kurds, coloureds, Islamics, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it. Misfortunes punctually visit disadvantaged minority groups, but only as the result of well-disposed coincidence.⁸⁰

It is, of course, true that the Court did establish ethnicity-based persecution amounting to degrading treatment in *Cyprus v. Turkey* with respect to the Karpas Greek-Cypriot community, holding that the 'treatment to which they were subjected ... can only be explained in terms of the features which distinguish them from the Turkish-Cypriot population, namely their ethnic origin, race and religion.'⁸¹ But the practice of the American human rights bodies provides more guidance as to what consequences the finding of a particular vulnerability can or should have. In the context of the rights of indigenous peoples, which can inspire us also when we are talking about European national minorities, the relationship between past injustice, the vulnerability arising out of it, and the consequential far-reaching state duties to remedy and compensate becomes apparent. Where, in the past, indigenous communities were as much as the victims of plunder of their lands,⁸² human rights law places an obligation on states to adopt extraordinary measures aimed at the restitution of property unjustly taken, such as the suspension of statutes of limitation to enable victims access to a court even a long time after the loss of their land, and more, for instance the acquisition of land to distribute amongst the members of the communities concerned.⁸³

The Inter-Am.Ct.H.R. took this approach even further in its 2001 *Mayagna (Sumo) Awas Tingni Indians* judgment⁸⁴ by ordering Nicaragua that it 'must adopt in its domestic law ... the legislative, administrative, and any other measures necessary to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores ...,' must do so 'with full participation by the Community'⁸⁵ and, furthermore, by ruling that the state must 'invest, as reparation for immaterial damages, in the course of 12 months, the total sum of USD 50,000 ... in works or services of collective interest for the benefit of the Mayagna (Sumo) Awas Tingni Community.'⁸⁶

Thus, while throughout the systems of human rights protection there is a trend to recognise the vulnerability of (members of) minorities and indigenous peoples — according to a May 2002 report by Minority Rights Group to the UN Working Group on Minorities, however, this is not the case with respect to minorities' right to development⁸⁷ — one must concede that the practice so far, with the notable exception of the Inter-American bodies, has not developed any discernible guidelines as to what consequences that realisation should have. The European Court's reluctance to find that violence was motivated by ethnic hatred is mirrored in its approach in less controversial cases where, for example, general zoning regulations have been found to prevail over minorities' rights to traditional housing. While in the deprivation of liberty field, even after a merely cursory look at the practice to extract purposeful rules on states' positive protection duties, the ethnicity criterion does not appear to permit such conclusions.

THE OTHER SIDE OF VULNERABILITY: PROTECTION DUTIES, INTERFERENCE, AND VULNERABLE STATES

THE AFORESAID ALLOWS ANOTHER CONCLUSION, NAMELY THAT THE IDENTIFICATION OF VULNERABILITY — BE IT OF A GROUP OR AN INDIVIDUAL — MANDATES PARTICULAR ATTENTION OF STATES AND, ROUTINELY, GIVES RISE TO PROTECTION DUTIES. Thus, for instance, a vulnerable prisoner must be identified, possibly separated from the general prison population as far as necessary in his interest, and treated and supervised appropriately. Occasionally, these protection duties entail limitations placed on the fundamental rights and freedoms of others. If a state is obliged to take particular care of children who were victims or witnesses of a crime, it may have to modify or restrict defendants' due process rights such as the publicity of the trial, the extent to which the cross-examination of child witnesses is permitted *etc.* These positive duties are not easy to categorise, just like the factors leading international bodies to conclude that certain individuals or groups shall belong to a vulnerable class.

With respect to the rights of minorities and indigenous peoples, we have come to realise that the remedies aspect of identifying vulnerability must acknowledge the particularities of the geographical region concerned and thus offer more prospects of success when it comes to developing some kind of general guidelines if we look at the regional systems of human rights protection individually. Thus, the Inter-American system is well advanced with respect to providing redress for egregious past violations of the most fundamental rights of indigenous populations bringing them to the brink of extinction while, in the European context, the development of a vulnerability-based approach to affir-

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mative measures in favour of minorities is still in its early stages. In the field of prisoners' rights, on the other hand, Europe leads the way by having developed succinct rules on how to identify, separate, treat and actively protect the more and most vulnerable classes of persons deprived of their liberty.

To discuss the feasibility of elaborating rules as to how far-reaching protection measures must be or may be in particular situations, and what limits would result from a balancing of competing fundamental rights, is beyond the scope of this article since this aspect requires further in-depth analysis. However, apart from the vulnerability of individuals and groups and the consequences arising out of such a qualification, we also have to briefly consider the question of vulnerable states or vulnerable societies. The Eur.Ct.H.R. has acknowledged 'the sensitive nature of the ongoing peace process [in Northern Ireland] and the complexity of the security situation which it seeks to resolve. Consequently, it would accord to the Government a wide margin of appreciation in the measures perceived as necessary in the pursuit of that process.'⁸⁸

The re-establishment or strengthening of democratic institutions in conflict-torn societies, in particular of an independent judiciary, renders these institutions particularly vulnerable to attacks by those who wish to undermine the peace and reconstruction process. States may therefore be accorded a wider margin of appreciation with respect to the measures they take, even if they interfere with rights, such as the right to a fair trial, to an extent that would otherwise not be tolerable.⁸⁹ A somewhat wider margin is also given to states when they seek to protect their citizenry against a breakdown of essential services due to industrial action.⁹⁰ This accords with the tendency of international supervisory bodies to show a degree of

lenience when newly independent states or states in transition to a democratic society fail to comply fully with minimum human rights standards, but demonstrate their willingness to improve the situation without undue delay. The HRC, for instance, has emphasised the efforts by governments of such states to remedy a situation of widespread human rights violations they inherited from their predecessors⁹¹ and acknowledged the 'clear progress in securing civil and political rights.'⁹² Further, it has noted 'with satisfaction that recently enacted laws ... are of a liberal character, demonstrating the Government's intention to restructure society in accordance with basic democratic principles.'⁹³

But considerations have not been limited to man-made vulnerabilities or, rather, susceptibilities.⁹⁴ The CRC has, particularly in the case of island states, 'acknowledge[d] the[ir] vulnerability ... with respect to natural disasters such as cyclones, typhoons, tidal waves and flooding, and the challenges faced in this regard'⁹⁵ and accepted that such factors may adversely affect a state's ability to comply with certain human rights requirements.⁹⁶

It appears from all this that monitoring bodies do accept that certain political and societal changes as well as factual situations render state structures vulnerable — or susceptible — either to internal conflict or to other events that may undermine their ability to give full effect to their human rights obligations, even if they are willing to comply with them. On the other hand, alleged vulnerability is sometimes nothing but a disguise of the fact that a state is in reality unwilling to change its practices in light of its human rights obligations; therefore, supervisory bodies tend to subject such claims to quite strict scrutiny.⁹⁷

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THE QUESTION OF INTERNATIONAL PROCEDURES

FINALLY, QUESTIONS RELATING TO THE STATUS OF THE PARTICULARLY VULNERABLE AS PETITIONERS BEFORE INTERNATIONAL HUMAN RIGHTS BODIES MERIT CONSIDERATION. The practice in this area concentrates on three related issues: violations of the right to petition; effective remedies; and the requirement to exhaust domestic remedies.

In the *Akdivar* and *Kurt* cases, the Eur.Ct.H.R. developed the standard that 'regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities'⁹⁸ when interference with the right to petition is alleged. Basically the same applies to the exhaustion rule. For the ACHR bodies, the 'rule of exhaustion of domestic remedies does not require the invocation of remedies where this would place the physical integrity of the petitioner at risk, or where this offers no possibility of success.'⁹⁹ However, applicants have to advance what amounts to special circumstances¹⁰⁰ in this respect.

In the given context, we are once again confronted with the interplay between vulnerability, the gravity of the alleged human rights violation, and the level of duties a state faces. For example, 'where an individual has an arguable claim that he or she has been tortured'¹⁰¹ by agents of the State, the notion of an effective remedy entails ... a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.'¹⁰² The seriousness of the violation may 'cause [the victims] to feel vulnerable, powerless and apprehensive of the representatives of the State'¹⁰³ or even make them dependent on the assistance of the very authorities they point out as

the perpetrators, as was the case when security forces destroyed the houses of the applicants in certain cases against Turkey.¹⁰⁴

However, other cases show that, where a grave violation is alleged but is no longer continuing (such as torture in the past), at least the status of vulnerability must be shown to persist in order for the person concerned to benefit from being exempt from exhausting domestic remedies. Where victims have secured the assistance of legal counsel but nevertheless fail to bring the allegations to the attention of domestic authorities competent to provide a remedy, their claim of unavailability will likely fail¹⁰⁵ unless the entire situation in the country or region concerned is so volatile that a tribunal is convinced that 'a generalized fear in the legal community prevents [the individual] from obtaining [legal] representation,' then 'the exception ... is fully applicable and the individual is exempted from the requirement to exhaust domestic remedies.'¹⁰⁶

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CONCLUDING REMARKS

AS WE SAID AT THE OUTSET, THE CONCLUSIONS ONE MAY DRAW FROM THE FOREGOING ANALYSIS MAY ONLY BE TENTATIVE SINCE A FURTHER EXPLORATION OF THE TOPIC IS REQUIRED. What can be extracted from this selective look at the broad and largely unsystematic lawmaking and implementing practice, however, is that the (alleged) vulnerability of certain individuals or groups has been taken into consideration by human rights supervisory bodies at the universal level and within virtually all regional bodies in the exercise of both their monitoring and adjudicative powers. It also guides the drafters of specialised or otherwise advanced binding treaties and non-bind-

ing international instruments. Vulnerability is therefore not merely a *terminus technicus* that serves to identify certain individuals/groups in relation to the enjoyment/deprivation of certain rights, but a qualifying factor that can have concrete consequences in the context of human rights litigation.

There is no single approach to definition of vulnerability. In fact, there is no definition or purposeful categorisation at all. Instead, we encounter a vast practice of identifying the particularly vulnerable for very limited purposes. Usually this identification serves the sole purpose of classifying a specific group in the context of a particular right or issue. The following appears to guide international human rights bodies when they apply the concept:

- (a) the intention not to draw up a masterlist of who or what is vulnerable in general terms that would apply universally, within a regional system, or simply within a given treaty;
- (b) instead, an almost uniform practice to establish specific, and sometimes sophisticated, lists of vulnerable categories of individuals/groups both within treaties and in practice; and
- (c) the customary insistence that these lists are not exhaustive but exemplary by inserting "other" clauses and thus suggesting that other individuals/groups may be considered just as vulnerable as those listed.

Certain distinguishing criteria defining the vulnerable appear more frequently and systematically than others and form categories. A necessarily tentative list of these categories includes age, sex, ethnicity, health, liberty, and "other status". That leaves a large quantity of miscellaneous, non-categorised criteria and serves as an additional indicator for the very limited systematic approach behind identifying vulnerability.

The criteria are frequently combined with a view to identifying the individuals/groups that are more vulnerable, for instance detainees in general as opposed to mentally disturbed detainees. As mentioned above, these comparisons are of a strictly *intra*-document character and do not (nor are they intended to) create generally applicable hierarchies of vulnerability. Insofar as rankings do occur, they serve the exclusive purpose of differentiating between categories of individuals already found to be deserving of special care and attention and sub-categories that warrant an even higher degree of positive measures of protection and/or promotion.

We have repeatedly encountered the phenomenon that vulnerability, the gravity of past human rights violations, and the scope of positive protective or restorative duties of states closely interact. The vulnerability-gravity-duties line of thought is evident in at least two of the issues examined above, namely the Inter-American approach to restoring some of the rights and entitlements which the indigenous population was deprived of in the past and the global as well as regional bodies' line of jurisprudence concerning the required exhaustion of domestic remedies. It appears that the very same concept could come into play in various other contexts and may well be one of the generally applicable rules that need to be developed with respect to the concept of vulnerability in international human rights law.

The consequence of vulnerability for the individual or group concerned is that a higher level of human rights protection in their favour is required from states. How this higher level shall be defined or measured must be left open in the present study and may, in any event, be impossible and undesirable to stipulate in general terms. The analysis has shown that there are significant differences in how the

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scope of more protective duties is perceived (as we have seen in the context of minorities' rights in the Americas and in Europe). Yet, as the European approach to prisoners' rights suggests, certain areas of human rights law are clearly superior to others when it comes to setting forth proper responses to increased vulnerability. It would seem that narrower, more specialised areas that have been the special focus of international implementation mechanisms are more likely to yield such results (for instance, the CPT system in Europe).

Finally, people petitioning international human rights bodies may be found to be vulnerable and treated differently with respect to their procedural status. These cases all relate to the right to effectively petition and to the corresponding duties of state-parties to human rights treaties.

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1 The following abbreviations will be used throughout this article: ACHR = American Convention on Human Rights; AIDS = Acquired Immune Deficiency Syndrome; CCPR = UN Covenant on Civil and Political Rights; CEDAW = UN Convention (or Committee) on the Elimination of Discrimination against Women; CERD = UN Convention (or Com-

mittee) on the Elimination of Racial Discrimination; CESCR = UN Covenant (or Committee) on Economic, Social and Cultural Rights; CoE = Council of Europe; CPT = European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; CRC = UN Convention (or Committee) on the Rights of the Child; ECHR = European Convention of Human Rights and Fundamental Freedoms; Eur.Comm.H.R. = European Commission of Human Rights; Eur.Ct.H.R. = European Court of Human Rights; HIV = Human Immunodeficiency Virus; HRC = UN Human Rights Committee; Inter-Am.Comm.H.R. = Inter-American Commission on Human Rights; Inter-Am.Ct.H.R. = Inter-American Court of Human Rights; UN = United Nations; UNAIDS = Joint United Nations Programme on HIV/AIDS.

2 Inter-Am.Comm.H.R., Annual Report 1993, OEA/Ser/L/V/II.85 (1993), Chapter V, Part I.

3 CESCR, Poverty and the International Covenant on Economic, Social and Cultural Rights, statement adopted on 4 May 2001, E/C.12/2002/10, dated 10 May 2001, para. 7, which says that poverty today is defined 'as the lack of basic capabilities to live in dignity. This definition recognises poverty's broader features, such as hunger, poor education, discrimination, vulnerability and social exclusion.'

4 CESCR, General Comment 12: The Right to Adequate Food, E/C.12/1999/5, dated 12 May 1999.

5 See CRC, Summary Record of the 497th Meeting: General Discussion on Children Living in a World with HIV/AIDS, CRC/C/CR.497, dated 8 October 1998, statement by Mr. Piot (UNAIDS), at para. 15, and numerous other statements in that document.

6 International Guidelines on HIV/AIDS and Human Rights, U.N.Comm.H.R. Res. 1997/33, E/CN.4/1997/150 (1997).

7 See CRC, Summary Record of the 599th Meeting, CRC/C/SR.599, dated 24 January 2000, Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Discussion with the United Nations High Commissioner for Human Rights, at para. 8, where Mrs. Robinson lists gender and ethnicity as examples of previous unequal treatment.

8 Adopted on 25 January 1996, entered into force on 1 July 2000, E.T.S. No. 160.

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9 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

10 CoE, Committee of Ministers Resolution (73)5 of 19 January 1973.

11 CoE, Committee of Ministers Recommendation No. R(87)3 of 12 February 1987 (hereinafter: the European Prison Rules).

12 CoE, Committee of Ministers Recommendation Rec(2001)10 on the European Code of Police Ethics adopted on 19 September 2001 at the 765th meeting of the Ministers' Deputies (hereinafter: European Code of Police Ethics), Principle 44.

13 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para), dated 9 June 1994, Inter-Am. T.S. No. A 61, Article 9.

14 CESCR, General Comment 7: The Right to Adequate Housing (Art. 11 (1)), dated 20 May 1997.

15 CESCR, General Comment 12: The Right to Adequate Food.

16 Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter XII, The Rights of the Child, OEA/Ser.L/V/II.111 doc. 21 rev., 6 April 2001, para. 10.

17 CRC, Preamble, para. 4.

18 Inter-Am.Comm.H.R., Report No. 38/96, Case 10.506, *X and Y* (Argentina), dated 15 October 1996, para. 103.

19 Emphasis added.

20 See CRC, Concluding Observations: Russian Federation, CRC/C/15/Add.4, dated 18 February 1993, para. 9, and others.

21 See also HRC, Concluding Observations: Mexico, CCPR/C/79/Add.32, dated 18 April 1994, para. 17.

22 CRC, Report of the Committee 2002, A/57/41, para. 41.

23 CRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland (Overseas Territories), CRC/C/15/Add.135, dated 16 October 2000, para. 14.

24 CRC, Concluding Observations: Saint Kitts and Nevis, CRC/C/15/Add.104, dated 24 August 1999, para 11.

25 CRC, Concluding Observations: Denmark, CRC/C/15/Add.151, dated 10 July 2001, para. 32.

26 CRC, Concluding Observations: Poland, CRC/C/15/Add.31, dated 15 January 1995, para. 17.

27 CRC, Initial Reports of States Parties: Uganda, CRC/C/3/Add.40, dated 17 June 1996, para. 203.

28 CRC, Summary Record of the 649th Meeting: General Discussion on State Violence against Children, CRC/C/SR.649, dated 28 September 2000, para. 21.

29 See Inter-Am.Comm.H.R., Report No. 10/00, Case 11.599, *Marcos Aurelio de Oliveira* (Brazil), dated 24 February 2000, para. 37.

30 CRC, Report of the Committee 2002, para. 41.

31 Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter XII, The Rights of the Child, para. 34 (emphasis added).

32 See HRC, Concluding Observations: Mexico, CCPR/C/79/Add.32, dated 18 April 1994, para. 17.

33 See Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter XII, The Rights of the Child, para. 34.

34 See CRC, Concluding Observations: Mozambique, CRC/C/15/Add.172, dated 7 February 2002, para. 68 (b) (emphasis added), summarising that street children are 'vulnerable to, *inter-alia*, sexual abuse, violence, including from the police, exploitation, lack of access to education, substance abuse, sexually transmitted diseases, HIV/AIDS and malnutrition.'

35 CESCR, General Comment 5: Persons with Disabilities, UN ESCOR, 1994, Doc. No. E/1995/22, para. 32 (emphasis added).

36 See, *e.g.*, CRC, Concluding Observations: Sudan, CRC/C/15/Add.10, dated 18 October 1993, para. 13.

37 See, *e.g.*, CRC, Concluding Observations: Mozambique, CRC/C/15/Add.172, dated 7 February 2002, para. 52 (d) (emphasis added): 'The PARTICULAR situation of children orphaned by HIV/AIDS, who are PARTICULARLY vulnerable to, *inter-alia*, commercial exploitation, abuse and neglect.'

38 Eur.Comm.H.R., Appl. 12154/86, *Abrahamsson v. Sweden*, decision on the admissibility of 5 October 1987, para. 1.

39 Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter XII, The Rights of the Child, para 35, with references to practice of the Eur.Ct.H.R.

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40 See CRC, Initial Reports of States Parties: Australia, CRC/C/8/Add.31, dated 1 February 1996, para. 1440, which mentions closed hearings in juvenile cases and 'giving evidence by way of closed circuit television and having the child accompanied by a relative or friend for emotional support' as a means to accommodate the special needs of under-age participants. In the Eur.Ct.H.R. the British government argued that closed hearings in juvenile cases were justified, *inter alia*, to protect children who 'are especially vulnerable to the glare of publicity': Appl. 36337/97, *B v. the United Kingdom*, and 35974/97, *P v. the United Kingdom*, decisions on the admissibility of 14 September 1999, para. 1.

41 See HRC, Communication No. 307/1988, *Campbell v. Jamaica*, views of 24 March 1993, CCPR/C/47/D/307/1988, individual opinion submitted by Mr. Bertil Wennergren.

42 CoE, Committee of Ministers, Recommendation Rec(2001)16 on the Protection of Children Against Sexual Exploitation, adopted on 31 October 2001 at the 771st meeting of the Ministers' Deputies, Principle 33.

43 See Eur.Ct.H.R., *Tomasi v. France*, judgment of 27 August 1992, Series A, No. 241-A, para. 113, where the Commission's delegate 'stressed the vulnerability of a person held in police custody'

44 See the Explanatory Report to the European Prison Rules, B. 1., which also mentions the then disproportionately high percentage of applications from persons deprived of their liberty filed with the Eur.Comm.H.R.

45 Eur.Comm.H.R., Appl. 24276/94, *Kurt v. Turkey*, report of 5 December 1996, para. 201, affirmed, *inter alia*, by the Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/96/1, *Josip, Bozana and Tomislav Matanovic v. the Republika Srpska*, decision on the merits of 11 July 1997, para. 60.

46 Inter-Am.Comm.H.R., Second Report on the Situation of Human Rights in Peru, Chapter IX, Prison Conditions, OEA/Ser.L/V/II.106 doc. 59 rev., dated 2 June 2000, para 1.

47 See Eur.Ct.H.R., *Ribitsch v. Austria*, judgment of 4 December 1995, Series A, No. 336, para. 36.

48 Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter VII, The Right to Liberty, para. 31.

49 CPT, Denmark: Visit 1990, CPT/Inf(91) 12, A (4) (f), para. 43; Germany: Visit 1991, CPT/Inf(93) 13, A (4) (e), para. 42; United Kingdom (Northern Ireland): Visit 1993, CPT/Inf(94) 17, D (g), para. 75; Czech Republic: Visit 1997, CPT/Inf(99) 7, A (4) (f); Andorra: Visit 1998, CPT/Inf(2000) 11, II. A (4) (f); Spain: Visit 1998, CPT/Inf(2000) 5, A (3) (f), para. 32; and Lithuania: Visit 2000, CPT/Inf(2001) 22, A (4) (f), para. 49.

50 See CPT, Norway: Visit 1999, CPT/Inf(2000) 15, C (2), para. 39, referring to a circular of the Director General of the Prison Service.

51 See Eur.Ct.H.R., Appl. 36790/97, *Zhu v. the United Kingdom*, decision on the admissibility of 12 September 2000, "The Law": 'The Court also notes that the applicant's position as a foreigner in the prison rendered him particularly vulnerable.'

52 See CPT, Denmark: Visit 1990, CPT/Inf(91) 12, A (1) (c) (v), para. 51.

53 See CPT, Greece: Visit 1993, CPT/Inf(94) 20, B (3) (a), para. 114; and the Netherlands: Visit 1992, CPT/Inf(93) 15, B (5) (c), para. 123.

54 CPT, Latvia: Visit 1999, CPT/Inf(2001) 27, B (3) (a), para. 105.

55 CPT, Malta: Visit 1995, CPT/Inf(96) 25, A (4) (f), para. 38.

56 See Eur.Ct.H.R., Appl. 21986/93, *Salman v. Turkey*, judgment of 27 June 2000, para. 132.

57 See CPT, Finland: Visit 1992, CPT/Inf(93) 8, B (6) (e), para. 140.

58 See Inter-Am.Comm.H.R., Report on the Situation of Human Rights in Mexico, Chapter IV, The Right to Humane Treatment, OEA/Ser.L/V/II.100 doc. 7 rev. 1, dated 24 September 1998, para. 307.

59 See Inter-Am.Ct.H.R., *Velásquez Rodríguez* case, judgment of July 29, 1988, Series C, No. 4, para. 156, and Inter-Am.Comm.H.R., Report No. 64/99, Case 11.778, *Ruth Del Rosario Garcés Valladares* (Ecuador), dated 13 April 1999, paras. 45-47.

60 Eur.Ct.H.R., Appl. 27229/95, *Keenan v. the United Kingdom*, judgment of 3 April 2001, para. 90.

61 Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter VIII, The Situation of Persons Detained in the Guatemalan Penal System, para. 33.

62 See the applicant's submissions in Eur.Ct.H.R., Appl. 46477/99, *Edwards v. the United Kingdom*, decision on the admissibility of 7 June 2001, para. 3.

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63 CPT, Hungary: Visit 1994, CPT/Inf (96) 5 [Part 1], A (5) (b), para. 64.

64 See, e.g., CPT: Ireland: Visit 1993, CPT/Inf (95) 14, B (3) (b), para. 107, where the Committee emphasised that 'the differing legal status and needs of convicted and unconvicted prisoners should be reflected in the regimes applied to them.'

65 CPT, Finland: Visit 1998, CPT/Inf (99) 9, C (7), para. 138; Ireland: Visit 1998, CPT/Inf (99) 1, C (1), para 106; and Hungary: Visit 1999, CPT/Inf (2001) 2, C (5), para. 158. Also see CPT, Latvia: Visit 1999, CPT/Inf (2001) 27, B (3) (a), para. 208.

66 Eur.Ct.H.R., *Keenan v. the United Kingdom*, para. 110, with reference to the *Herczegfalvy v. Austria* judgment of 24 September 1992, Series A, No. 244, para. 82, and the *Aerts v. Belgium* judgment of 30 July 1998, Reports 1998-V, para. 66.

67 CPT, Denmark: Visit 1990, CPT/Inf (91) 12, A (1) (c) (v), para. 51.

68 European Prison Rules, Rule 86.

69 See, e.g., CPT, Latvia: Visit 1999, CPT/Inf (2001) 27, B (3) (a), para. 105.

70 Such as the Framework Convention for the Protection of National Minorities, adopted on 1 February 1995, entered into force on 1 February 1998, E.T.S. No. 157, and the European Charter for Regional or Minority Languages, adopted on 5 November 1992, entered into force on 1 March 1998, E.T.S. No. 148.

71 See, e.g., the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN Commission on Human Rights in its Resolution 1992/16 of 21 February 1992 and by the General Assembly in its Resolution 47/135 of 18 December 1992, E/CN.4/1992/48 & Corr. 1 (1992), 16-19, and the Proposed American Declaration on the Rights of Indigenous Peoples, approved by the Inter-Am.Comm.H.R. on 26 February 1997, at its 1333rd Session, 95th Regular Session.

72 Inter-Am.Comm.H.R., Second Report on the Situation of Human Rights in Peru, Chapter X, The Rights of Indigenous Communities, OEA/Ser.L/V/II.106 doc. 59 rev., dated 2 June 2000.

73 Inter-Am.Comm.H.R., Report on the Situation of Human Rights in Brazil, Chapter VI. G., The Yanomami: *The Fragility of Their Culture and Conditions for Physical and Cultural Survival* (1997).

74 See European Code of Police Ethics, Principle 49: 'Police investigations ... shall be sensitive and adaptable to the special needs of persons, such as ... minorities including ethnic minorities.'

75 See CRC, Concluding Observations: Denmark, CRC/C/15/Add.151, dated 10 July 2001, para. 32.

76 See CEDAW, Concluding Observations: Finland, A/50/38, dated 31 May 1995, para. 389.

77 See CERD, Summary Record of the 1144th Meeting: Hungary, CERD/C/SR.1144, dated 18 April 1996, statement by Mr. Yutzis, para. 5, as well as Concluding Observations: Bulgaria, CERD/C/304/Add.29, dated 23 April 1997, para. 8, and Concluding Observations: Hungary, CERD/C/304/Add.4, dated 28 March 1996, para. 14.

78 Eur.Ct.H.R., Appl. 27238/95, *Chapman v. the United Kingdom*, judgment of 18 January 2001, para. 96, and several others, with references to *Buckley v. the United Kingdom*, judgment of 26 August 1996, Reports 1996-IV, paras 76, 80 and 84.

79 See Eur.Comm.H.R., Appl. 31006/96, *David and Rosalie Webb v. the United Kingdom*, decision on the admissibility of 2 July 1997, para. 4.

80 Eur.Ct.H.R., Appl. 38361/97, *Anguelova v. Bulgaria*, judgment of 13 June 2002, partly dissenting opinion of Judge Bonello, paras 2 and 3.

81 Eur.Ct.H.R., Appl. 25781/94, *Cyprus v. Turkey*, judgment of 10 May 2001, para. 309.

82 Inter-Am.Comm.H.R., Fifth Report on the Situation of Human Rights in Guatemala, Chapter IX, The Rights of Indigenous Peoples, para. 61.

83 *Ibid.*

84 The case basically concerned the inability of the Indian community to have their traditional titles to land recognised in proceedings concerning the validity of a logging concession and led the Court to conclude that Articles 21 (right to property) and 25 (right to recourse to a court) of the ACHR were violated.

85 Inter-Am.Ct.H.R., *The Case of the Mayagna (Sumo) Awas Tingni Indians v. Nicaragua*, judgment of 31 August 2001, Series C, No. 79, paras 138, 164 and 173, operative para. 3.

86 *Ibid.*, para. 173, operative para. 6.

87 See Minority Rights Group International, *Minority Rights and Development: Overcoming Exclusion, Discrimination and Poverty*, E/CN.4/Sub.2/AC.5/2002/WP.6, dated 24 May 2002.

88 Eur. Ct. H.R., Appl. 44934/98, *John Murdock v. the United Kingdom*, decision on the admissibility of 25 January 2000, The Law.

89 See Eur.Ct.H.R., *Brannigan and McBride v. the United Kingdom*, judgement of 26 May 1993, Series A, No. 258-B, para. 59, where the Court speaks of the vulnerability of the judiciary of Northern Ireland to terrorist attacks.

90 See Eur.Comm.H.R., Appl. 11603/85, *Council of Civil Service Unions et al. v. the United Kingdom*, decision on the admissibility of 20 January 1987.

91 See, e.g., HRC, Concluding Observations: Slovenia, CCPR/C/79/Add.40, dated 21 September 1994.

92 HRC, Concluding Observations: Belarus, CCPR/C/79/Add.5, dated 25 September 1992, para. 4.

93 *Ibid.*

94 It is apparent that occasionally the term "vulnerable" is used instead of a more appropriate one, such as "susceptible".

95 CRC, Concluding Observations: Vanuatu, CRC/C/15/Add.111, dated 10 November 1999, para. 6.

96 See also CRC, Concluding Observations: Saint Kitts and Nevis, CRC/C/15/Add.104, dated 24 August 1999, para. 7, and Concluding Observations: Grenada, CRC/C/15/Add.121, dated 28 February 2000, para. 6.

97 See CESCRC, Summary Record of the 8th Meeting: Honduras, E/C.12/2001/SR.8, dated 30 January 2001, statement by Mr. Medina concerning deforestation.

98 Eur.Ct.H.R., Appl. 21986/93, *Salman v. Turkey*, judgment of 27 June 2000, para. 130, summarising the standard developed in *Akdivar et al. v. Turkey*, judgment of 16 September 1996, Reports 1996-IV, para. 105, and *Kurt v. Turkey*, judgment of 25 May 1998, Reports 1998-III, para. 160.

99 Inter-Am.Comm.H.R., Report No. 31/99, Case 11.763, *Plan De Sánchez Massacre* (Guatemala), dated 11 March 1999, para. 27, with reference to Inter-Am.Ct.H.R., *Exceptions to the Exhaustion of Domestic Remedies (Art. 46 (1), 46 (2) (a) and 46 (2) (b) American Convention on Human Rights)*, advisory opinion OC-11/90 of 10 August 1990, para. 33.

100 Eur.Ct.H.R., Appl. 23286/94, *Mentes et al. v. Turkey*, judgment of 28 November 1997, Reports 1997-VIII, para. 60, and many others.

101 See Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/96/45, *Samy Hermas v. the Federation of Bosnia and Herzegovina*, decision on the admissibility and merits of 16 January 1998, para. 109, according to which this standard equally applies to the lesser forms of mistreatment, i.e. inhuman or degrading treatment.

102 Eur.Ct.H.R., *Aydin v. Turkey*, judgment of 25 September 1997, Reports 1997-VI, para. 103.

103 Eur.Ct.H.R., Appl. 22277/93, *Ilban v. Turkey*, judgment of 27 June 2000, para. 61, and many others.

104 See *Akdivar et al. v. Turkey*, at para. 74.

105 See, amongst others, Eur.Ct.H.R., Appl. 40518/98, *Yildirim v. Turkey*, partial decision on the admissibility of 22 November 2001, para. 1, and Appl. 34684/97, *Yolcu v. Turkey*, decision on the admissibility of 3 May 2001, 'A. Alleged violation of Article 3 of the Convention.'

106 Inter-Am.Ct.H.R., *Exceptions to the Exhaustion of Domestic Remedies*, OC-11/90, para. 35.

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