

## COMMISSION ON HUMAN RIGHTS

### COMPILATION OF SPECIAL PROCEDURES' RECOMMENDATIONS BY COUNTRY

In its resolution 2004/76 on "Human Rights and Special Procedures", the Commission on Human Rights requests the High Commissioner:

"10 (c) To continue to prepare a comprehensive and regularly updated electronic compilation of special procedures' recommendations by country, where such does not yet exist, including the relevant comments of States thereto as published within the United Nations system".

The present document compiles recommendations by special procedures after visits carried out between the 60<sup>th</sup> and the 61<sup>st</sup> sessions of the Commission on Human Rights.

As requested in the above-mentioned resolution, regularly updated versions of the document will be posted on the OHCHR's web site.

For any additional information on the status of country visits by special procedures mandate-holders (visits scheduled, visits requested, visits carried out), please refer to the table on country visits by special procedures, which can be found at the following address:

<http://www.ohchr.org/english/bodies/chr/special/country-visits.doc>

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## **AFGHANISTAN**

### **Introduction**

During the period under review, the Independent Expert on the situation of human rights in Afghanistan visited Afghanistan (please refer to document E/CN.4/2005/122).

### **I. Institutional and legal framework for the promotion and protection of human rights:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 1 and 77)

1. The Government should work with the international community to develop a comprehensive strategic plan regarding rule of law, justice, and human rights involving three fundamentals: reforms in the administration of justice to create effective institutions staffed by capable professionals who can defend and protect fundamental legal rights, including openly dealing with violations of the past; immediate actions to combat poppy cultivation and processing and drug trafficking, thereby reducing threats to stability and legal order, especially by factional commanders who are increasingly involved in organized crime; and anti-corruption policies to aid the State in defining its role as a unifying power that effectively governs through law.

77. The Government should pass enabling legislation for AIHRC, as envisaged in the Constitution. The Commission should continue to receive international support and financing. In accordance with the Paris Principles, AIHRC should receive funding from the State budget, and should be encouraged to strengthen its investigative and case-handling capacity.

### **II. Non-discrimination and equality before the law:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 60 and 61)

60. All female prisoners held in State detention facilities for actions that do not constitute crimes under Afghan law or through unfair and discriminatory legal processes should be released. Since many of these women are in need of shelter and assistance, the Government should work with international donors to set up temporary homes and rehabilitation centres.

61. The Government should work with the international community to train public defenders to strengthen due process protections and combat inappropriate detentions and convictions, especially for vulnerable populations such as women, youth and the poor.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 58 and 59)

58. The Government should create a commission to investigate the physical, sanitary and health conditions at all national prisons, followed by a comprehensive plan to rapidly improve all detention facilities to conform with the United Nations Standard Minimum Rules for the Treatment of Prisoners. This commission should work in conjunction with a permanent national prison monitoring body recommended in the previous report. These activities could be

established with the assistance of the international community and with the technical aid of UNAMA, UNDP, UNODC and other relevant organizations.

58. The Government should establish mechanisms to monitor the implementation of the new code of criminal procedure to ensure that individuals are not held in detention for lengthy periods of time without being charged, and to prevent security and intelligence forces from holding people outside of an appropriate legal process.

#### **IV. Administration of justice and the rule of law:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 78 to 81)

78. The Government should establish a mechanism to translate the broad objectives of the AIHRC report into a comprehensive action plan on transitional justice.

78. A system of vetting should be studied, proposed and implemented to ensure that individuals responsible for past atrocities are not allowed to hold positions of governmental authority and public trust. The process should be based on similar policies in other countries, yet structured to address the specific needs of Afghan society. The system should address various levels of responsibility, including mid-level actors, and the vetting system chosen should be structured to be as administratively secure and non-confrontational as possible. The process may involve the Civil Service Commission or a newly created entity, and may benefit from the presence of international actors and assistance. Assuring integrity and maintaining public confidence in its neutrality will be important to its success.

79. A variety of symbolic actions should be taken to commemorate the suffering of victims of political violence during the past decades of conflict.

80. The Government should work with the international community, AIHRC, human rights NGOs, civil society organizations and others to study the possible value of a truth commission as part of a broad process of social reconstruction and with the goal of encouraging national reconciliation.

#### **V. Fundamental freedoms:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 76, 88 and 89)

76. The Government should continue to support the development of a robust civil society and should use legislative and other means to encourage a free press, broad access to the media, the expansion of public discourse, and the development of new social, cultural and political organizations.

88. The Government should establish a formal SOFA agreement with the Coalition forces, detailing the basis for arrests, search and seizure and detentions and specifying that these activities must be in accordance with international human rights and humanitarian law. Detentions must take place in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and Coalition forces should be required to abide by basic human rights standards contained in relevant United Nations instruments. In addition, detainees should

be provided with some form of judicial supervision to ensure that no one is held without a valid legal basis.

89. Coalition forces should provide reasonable access to outposts to evaluate detention conditions and detainee treatment to representatives of the Government, AIHRC and appropriate international entities such as ICRC, as well as competent United Nations officials, including special rapporteurs and independent experts.

## **VI. Economic and social rights:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 64, 65 and 73 to 75)

64. The Government should continue to work closely with the international community to address the nation's severe social and economic challenges regarding health, education, labour and related issues, including concerted efforts to assist Afghanistan in meeting the Millennium Development Goals.

65. Comprehensive policies linking legislation, open hiring policies, public education and access to a variety of services should be implemented to assist the disabled in rebuilding their lives and successfully integrating into the nation's economy and society. In addition, international institutions should make a concerted effort to hire disabled Afghans.

73. As recommended in the independent expert's previous report, the Government should combine the faculties of civil law and Shari'a in order to integrate secular and Islamic law in accordance with the Constitution and to train a new generation of legal professionals.

74. Continued efforts should be made to improve access to primary school education for all children and to address obstacles to universal attendance through public awareness programmes, the construction of new schools, increased teacher training, and other activities.

75. Special efforts should be made to improve literacy and basic education skills for girls and women throughout the country.

## **VII. Cultural rights:**

n/a

## **VIII. Situation of specific groups:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 66 to 70)

66. The Government should continue to work closely with the international community to create comprehensive and sustainable policies to improve the situation of women and children in Afghanistan, with special attention on health, education, economic opportunities and political empowerment.

67. The Government should take firm and immediate action, including public awareness programmes, to prevent the transfer of women as compensation to the families of victims who

have been killed and should take similar action against other abusive customary law practices that violate women's rights.

68. Comprehensive policies linking legislation, capacity-building, sensitization, social services and public education should be implemented to address the problems of domestic violence and violence against women.

69. The Government should continue and expand its activities to prevent child trafficking and reduce child labour.

70. Women's rights and children's rights should be explicitly considered in all aspects of policy planning and implementation.

### **IX. The right to development and international cooperation:**

Independent expert on the situation of human rights in Afghanistan (E/CN.4/2005/122, paras. 83 to 87 and 91)

83. The Government should work with the international community to make immediate plans for the parliamentary elections including resolving national population figures in a professional and transparent manner, addressing necessary changes in the electoral law, making adequate preparatory plans for voting, quickly hiring all necessary experts and staff, and setting a date for the elections.

84. The international community should provide adequate financial, logistical and administrative support for the parliamentary elections, including election observers who will formally report on their findings.

85. ISAF, ANA and ANP should coordinate their forces to ensure adequate security for the parliamentary election process.

86. Immediate preparations should be made to assist the new parliament in its legislative, managerial and administrative functions by providing publications, guidelines, capacity-building and training. In addition, a special body should be created to assist legislators in evaluating the economic and policy feasibility of new legislation and to provide comparative research regarding the legislative activities of other countries facing similar challenges.

87. A broad-based public education and awareness programme should be implemented to assist the Afghan people in understanding the voting process and structure of the new representative bodies.<sup>90</sup> A significant effort should be made by the Government and the international community to ensure that all interventions, policies, programmes and strategies related to national reconstruction, democratic consolidation and the protection and promotion of human rights be designed to maximize local participation and domestic capacity-building.

91. The Government should work in close consultation with the international community and donor countries to ensure that national reconstruction efforts are grounded in Afghan social reality, especially as regards sensitivity to regional and local needs, and designed to positively impact provincial and district areas, rather than simply major urban centres such as Kabul.

**X. Comments from the Government**<sup>1</sup>

n/a

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<sup>1</sup> As published as official documents of the CHR.

## ANGOLA

### Introduction

During the period under review, the Special Representative on the situation of Human Rights Defenders visited the country (please refer to document E/CN.4/2005/101/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights:

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 102, 104, 105):

102. The Special Representative urges the Government to:

- Ratify the: International Convention on All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ILO Convention on the Worst Forms of Child Labour; Rome Statute of the International Criminal Court; 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Review existing legislation and assure its compatibility with the Declaration [on Human Rights Defenders] and other applicable international human rights standards including, in particular, the law on national security and the NGO law.
- Urgently review the process for the registration of human rights defenders associations; ensure that the registration process is expedited; proceed with the registration of those applications that are currently pending; significantly reduce the overall cost of registration and consider waiving registration fees for those applications that have been pending for more than one year;
- Recommends considering adopting a 'regime of declaration' whereby an association is legally recognized once it has formally declared itself to exist, without the requirement of any prior action by the State.

104. With regard to the Province of Cabinda, the Special Representative recommends that:

- The police should systematically investigate cases of violations reported and these cases should be taken by the prosecutor to court.
- The army should urgently seek to identify violations committed by its soldiers and ensure an appropriate judicial response for the perpetrators and redress for victims.

105. With regard to the Province of Huila, the Special Representative recommends that:

- The Provincial Human Rights Committee be formally established as a legal entity in complete independence of the State authorities, that it be accorded a fixed and adequate budget and that consideration be given to providing it with a permanent secretariat and offices.
- Procedures and capacity in the area of the justice system be reformed so as to increase access to the judicial process.

### II. Non-discrimination and equality before the law:

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 102):

102. The Special Representative urges the Government to: Ratify the International Convention on All Forms of Racial Discrimination; (...) the 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.



### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity:**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 102):

102. The Special Representative urges the Government to:

- Ratify the: (...) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ILO Convention on the Worst Forms of Child Labour; Rome Statute of the International Criminal Court; (...).

### **IV. Administration of justice and the rule of law**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 104):

104. With regard to the *Province of Cabinda*, the Special Representative recommends that:

- The police should systematically investigate cases of violations reported and these cases should be taken by the prosecutor to court.
- The army should urgently seek to identify violations committed by its soldiers and ensure an appropriate judicial response for the perpetrators and redress for victims.

### **V. Fundamental freedoms:**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 102):

102. The Special Representative urges the Government to:

- Urgently review the process for the registration of human rights defenders associations; ensure that the registration process is expedited; proceed with the registration of those applications that are currently pending; significantly reduce the overall cost of registration and consider waiving registration fees for those applications that have been pending for more than one year;
- Ensure full respect for the right to freedom of expression, in particular by encouraging the development of independent media outlets especially by immediately granting privately-owned radio stations permission to broadcast their program in all parts of the country.
- Improve access for human rights defenders to information, including that of all journalists to Government officials and public meetings.
- Ensure that defenders have timely and regular access to meet with State officials, including at senior levels.
- Establish an environment conducive to free and fair elections, including: allowing political opposition parties and activists to effectively campaign; fully involving human rights defenders in the process and allowing them to independently monitor the Government's actions in preparing for the elections and to monitor the elections themselves.

### **VI. Economic and social rights**

n/a

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 102, 103):

102. The Special Representative urges the Government to:

- Improve access for human rights defenders to information, including that of all journalists to Government officials and public meetings.
- Ensure that defenders have timely and regular access to meet with State officials, including at senior levels.
- The Special Representative urges the Governor to organize regular periodic meetings, such as once every 4 months, with civil society and to personally hear their concerns regarding civil and political rights as well as economic, social and cultural rights. The Governor could consider publishing an annual report on the human rights violations that have occurred in the province and the action taken toward addressing them.

103. The Special Representative urges human rights defenders:

- To seek training on developing human rights strategies and the management of human rights organizations
- To strengthen their network.
- To consider publication of an annual human rights report for Angola, possibly representing the combined work of a network of national human rights defender organizations.

## **IX. The right to development and international cooperation**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.2, para 102, 106):

102. The Special Representative urges the Government to:

- Consider inviting OHCHR to increase the capacity of its presence in Angola and adapting its mandate to better meet the needs of human rights defenders in the coming pre and post electoral periods.
- Ratify the: International Convention on All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ILO Convention on the Worst Forms of Child Labour; Rome Statute of the International Criminal Court; 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Submit its reports due under the CESCPR and CCPR.

106. With regard to the United Nations, the Special Representative recommends that:

- The United Nations consider its responsibilities under the Declaration on human rights defenders and consider ways through which, within the limits of individual mandates and existing resources, the Organization can contribute to the Declaration's implementation.

- OHCHR consider seeking a broadening of its mandate and increase in its personnel capacity to allow the Office to monitor and raise concerns affecting human rights defenders, particularly in the context of preparing the upcoming elections.

**X. Comments from the Government**<sup>2</sup>

n/a

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<sup>2</sup> As published as official documents of the CHR.

## **BELARUS**

### **Introduction**

The Special Rapporteur on the situation of human rights in Belarus is submitting to the Commission on Human Rights his report E/CN.4/2005/35.

During the period under review, the Working Group on arbitrary detention visited the country (please refer to document E/CN.4/2005/6/Add.3).

### **I. Institutional and legal framework for the promotion and protection of human rights**

Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2005/35, paras. 68 to 80)

68. The Special Rapporteur is of the opinion that a robust programme of public education and public awareness in the field of human rights for the benefit of the ordinary citizens of Belarus is of paramount importance. Unfortunately, such a programme cannot be implemented in a country where civil initiatives are radically restricted while the media are strictly controlled by the Government. Therefore, the Commission on Human Rights, in cooperation with other international organizations such as OSCE and EU, should create an international fund for human rights education in Belarus, under the supervision of the Commission.

69. Such a fund should be used primarily to establish and finance, in a country neighbouring Belarus, a television and a radio station (including the necessary facilities for satellite transmission) through which accurate, complete and free information could be provided to the people of Belarus. These media channels could also be used to present and expose the violations of human rights in Belarus and elsewhere and the possible remedies for such breaches in accordance with democratic standards and international procedures. At the same time, they should contribute in a specific way to the consolidation of the cultural self-awareness and the national identity of the Belarusian people.

70. The Commission, together with willing and concerned international and national governmental and non-governmental organizations, as well as with private donors, should put in place a comprehensive programme of civil society training. Such a programme should be oriented first and foremost to the establishment and training of the non-political NGOs in Belarus, mainly at the local level, thus contributing to the development of the civil society and of the Belarusian communitarian spirit from the roots.

71. At the same time, the international community should continue its efforts to transfer the necessary know-how, to provide technical assistance and support (morally, politically, financially, intellectually and logistically) the Belarusian NGOs and the Belarusian democratic political parties. Legal assistance for defending civil and political democracy advocates and their families against government abuses is also needed.

72. The Commission should initiate and facilitate, in accordance with the needs, a permanent national round table on human rights in Belarus. This round table must be basically a Belarusian gathering under the auspices of and supported by the good offices of the Commission. The round table should offer a permanent framework for dialogue to the representatives of Belarusian civil society, political parties and governmental structures. The scope of the dialogue should be to assess the progress of the human rights situation in Belarus as well as to identify, by negotiation, the political, administrative and legislative remedies for the breaches of those rights. If the

Belarusian authorities are not willing to support such an idea, the round table should start even in their absence and act as a civic forum, producing and providing clear assessments and political and legislative initiatives for the best use of the Government and the society. If the Belarusian authorities do not allow the round table to be established and to function on Belarusian territory, it should be organized in a neighbouring country with the support of the Commission and with the agreement of the respective country's authorities.

73. At the request of the Commission, the High Commissioner for Human Rights should convene an international conference on the human rights situation in Belarus, inviting all States concerned about the deterioration of the situation of human rights in Belarus, that feel that this deterioration represents a threat to regional security and stability, and that are ready to contribute in an effective way to the improvement of the country's record in the field of respect for human rights. Within this framework, the international community must try to build clear solidarity in its approach to the human rights situation in Belarus and, at the same time, define a comprehensive and bold policy to ensure that all those concerned show due respect for the human rights of the citizens of Belarus.

74. The Commission should encourage the High Commissioner for Human Rights to take the initiative of establishing an international group of friends of human rights in Belarus. Under the auspices of this group two other groups should be formed: a contact group for the situation of human rights in Belarus, composed of a limited number of governmental representatives from different States who will try to engage in a constructive dialogue with the Belarusian authorities on the subject, and a group of donors that will try to collect the funds needed to support the various programmes and endeavours dedicated to the development of respect for human rights in Belarus. Such funds should also be used for cultural programmes aimed at developing the Belarusian national identity.

75. The EU, as well as other major European organizations, should be encouraged to pursue a motivating and inspiring policy towards Belarus, having among its main goals supporting respect for human rights in the country. Such a proactive and flexible strategy should combine appropriate sanctions with appropriate rewards in an effort to engage the Belarusian authorities in a constructive dialogue (including dialogue with Belarusian civil society) and pragmatic action for the improvement of the country's democratic and human rights record.

76. The Special Rapporteur is of the opinion that international isolation of Belarus is not desirable for its people, for the future of human rights in that country or its future integration within the democratic world. However, the Special Rapporteur believes that the existing sanctions adopted by the international community against Belarus must not be lifted at this point; they should be removed gradually and replaced by positive actions only following improvements in the human rights situation in Belarus. From this point of view, a clear "benchmark strategy" that will allow the international community to promptly adjust its policy in accordance with progress in the field, and at the same time will give the Belarusian authorities a clear idea of the consequences of their deeds, is highly advisable.

77. The main goal of the international community (both organizations and donors), should be to improve the effectiveness of its policy regarding respect for human rights in Belarus through more synergy and solidarity. The Russian Federation, as a neighbouring country having a special political relationship with Belarus, has a crucial role to play. Human rights should not become hostage to geopolitical controversies and rivalries.

78. Likewise, united action in favour of respect for human rights is needed in the internal life of the Belarusian society. Marginal disputes, personal ambitions and shortsighted actions on the part of the various players in Belarusian society must be put aside in favour of meaningful, joint endeavours. To this end, the international community should support only, or at least primarily, those projects that are promoted jointly by the democratic political and/or civil forces of Belarus.

79. The Special Rapporteur shares the general lack of optimism as to the readiness of the present Government of Belarus to dramatically improve the situation of human rights in the country. However, he is of the opinion that within the governmental circles in Belarus there are a number of officials who understand that a system based on a closed and controlled society and an internationally isolated State has no future in a globalized and democratic world. Therefore, they are more open to dialogue and more ready for a positive change. It is worthwhile trying to stay in contact with such people.

80. It is also advisable that the international community continue its efforts to engage all Belarusian authorities (including those who until now have refused dialogue) in a more cooperative attempt to improve the country's human rights situation. In this respect, the international community has already made its standards and its expectations clear. It has also indicated the areas where reforms are needed. These cover civil and political rights, such as the right to life, freedom of assembly, freedom of association, freedom of religion, the right to vote and free elections; economic and social rights such as employment, education, health, etc; as well as cultural rights, including academic freedom, minority rights, etc. Within this framework, the Special Rapporteur, while recognizing the equal importance of each and every human right, appreciates that in the current circumstances, progress is most urgently needed in respect of freedom of the media and the independence of the judiciary.

## **II. Non-discrimination and equality before the law**

n/a

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2005/35, paras. 82 to 86 and 89 to 91)

### *Recommendations regarding the death penalty*

82. The Special Rapporteur recommends that the Government carry out, without delay, a review of current practices surrounding executions, aimed at removing the veil of secrecy surrounding dates of execution and immediately release the bodies of all executed prisoners to their families.

83. Because of the irreversible nature of the death penalty and the risk of judicial error in sentences involving the death penalty, the Special Rapporteur recommends that the sentences of all prisoners condemned to death be commuted to terms of imprisonment.

84. Furthermore, the Special Rapporteur calls upon the Government to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty and incorporate it into domestic law.

85. The Special Rapporteur welcomes the recommendation of the Constitutional Court to abolish the death penalty, or, as a first step, to introduce a moratorium, and joins the Court in its urging that this be enacted by the Head of State and by the Parliament without delay.

86. Until such time as the concerns about practices surrounding the death penalty in Belarus are resolved, the Special Rapporteur recommends to all other Governments that they ensure that no one is deported or extradited if as a result of the deportation or extradition they would be at a risk of serious human rights violations including the death penalty and torture.

*Recommendations regarding torture, ill-treatment and cruel and unusual punishment*

89. The Special Rapporteur calls upon the Government to invite the Special Rapporteur on the question of torture for at least an exploratory visit, and to use the opportunity to consult him on concrete steps that can be taken to combat the impunity of law enforcement officials and eradicate the practice of torture.

90. The Special Rapporteur calls upon the Government to establish, in cooperation with qualified civil society experts where appropriate, a network of torture rehabilitation centres offering legal, psychosocial and specialized medical assistance to victims.

*Recommendation regarding detention issues*

91. The Special Rapporteur urges the Government to implement fully the recommendations made by the Working Group on Arbitrary Detention following its country visit in August 2004.

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.3, paras. 77, 78, 84 and 89)

77. The Working Group notes with satisfaction the efforts undertaken to improve the conditions of persons deprived of liberty. It noticed that the legal framework of detention was modified recently and that other reforms were to follow. The Group also noticed with satisfaction that the legal framework relating to illegal immigrants, asylum-seekers and refugees is in conformity with international norms.

78. The Group is also preoccupied by the restrictions imposed during pre-trial detention, when suspects are presumed innocent until proven guilty by a court. The conditions during pre-trial detention are more restrictive than those for persons serving their sentences.

84. The Working Group encourages the Government to take all appropriate measures to improve the conditions of detention of suspects and to reduce the overcrowding in pre-trial detention centres, in order to comply with the conditions detailed in the Set of Minimal Rules for the Treatment of Detainees. In this respect, it is particularly important to ensure that:

a) In practice, pre-trial detention shall be an exceptional measure which is applied only when alternative measures to detention have proven ineffective;

b) Restrictions which add to deprivation of liberty shall only be imposed when they are necessary to maintain discipline in the prison or in order to prevent obstruction of the investigation. In any event, they should be imposed by a judge or under his authority;

c) Complaints against acts committed by State agents, in particular investigators, should be entrusted to an external body, independent and impartial.

89. Finally, the Working Group strongly recommends the Government to allow outside oversight of prisons and other detention facilities, with a more active role of the civil society. At the same time, the Working Group believes that oversight of trials and proceedings, in which human rights are involved, especially when it comes to a deprivation of liberty, should be allowed.

#### **IV. Administration of justice and the rule of law**

##### Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2005/35, paras. 92 and 93)

###### *Recommendation regarding the independence of the judges and lawyers*

92. The Special Rapporteur draws the attention of the Government to the provisions of the Principles on the Independence of the Judiciary regarding the security of tenure of judges and urges their full implementation, in accordance with international standards.

93. The Special Rapporteur calls for the repeal of Presidential Decree No. 12 “On certain measures to improve the operation of the legal and notary professions in the Republic of Belarus”, and for the alignment of the relevant legislation regulating the work of the legal profession with the Basic Principles on the Role of Lawyers which require Governments to ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” (para. 16).

##### Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.3, paras. 78 to 83)

78. The Working Group is nevertheless concerned about the excessive powers granted to the Prosecutor’s Office and investigators during the pre-trial detention phase and about the lack of effective proceedings to challenge the legality, opportunity and necessity of such a detention. The Working Group is also concerned about the restrictions imposed during pre-trial detention, when suspects are presumed innocent until proven guilty by a court. The conditions during pre-trial detention are more restrictive than those for persons serving their sentences.

79. The Working Group is further worried about the imbalance between the powers granted to the prosecutor, which are paramount in the criminal process, and the limited ones conferred to defence lawyers, who do not always have access to the evidence and expertise controlled by the Prosecutor’s Office. Moreover, the Working Group is concerned at the lack of independence of lawyers and of the Bar Association and the restrictions imposed on the exercise of their profession. It is also concerned about the appointment and revocation procedures of judges, which do not guarantee their independence towards the executive branch of Government. Finally, the Working Group is concerned at the lack of a separate criminal procedure for juvenile offenders.

80. A main concern within the mandate of the Working Group is also the restriction imposed on freedom of expression and association through the arrest of several political opponents and the prohibition of some NGOs. Finally, the Working Group notes with concern the frequent use of administrative detention, which allows for the arrest and detention of a person during a certain period of time without grounds.

81. The Working Group invites the Government of Belarus to reconsider the role and place of the actors in a criminal procedure in order to ensure their independence, establish a balance



between parties at trial, and ensure an effective protection of the rights of persons deprived of liberty.

82. The State is invited to consider in priority:

(a) Taking all appropriate measures to guarantee in law and in practice the effective independence of judges and lawyers, as formulated in the Fundamental Principles Relating to the Independence of Judges and Lawyers and in the Fundamental Principles Relating to the role of Bar Associations, adopted by the General Assembly, in 1985 and 1990 respectively;

(b) Reconsidering the legal framework relating to pre-trial detention in order to ensure that placement in detention is ordered by a judge and not by the Prosecutor, and to ensure as well that the proceedings to challenge the legality of detention constitutes an authentic habeas corpus petition and that the court decides in the presence of the person concerned and his/her counsel;

(c) Separating the different agencies which may have an interest in an investigation from those in charge of prison supervision and pre-trial detention centres. The Working Group recommends that the prison administration and pre-trial detention centres be placed under the supervision of the Ministry of Justice, and that the regime of pre-trial detention not be answerable exclusively to investigators.

83. The Working Group recommends that legislation be aligned with international law standards in order to ensure the respect for the presumption of innocence, for the principles of opposition and adversarial procedure and equality of means in all phases of the criminal procedure:

(a) The defence lawyer and the accused should have access to all elements of proof and be granted effective means to challenge the accusation at trial;

(b) Experts and laboratories should benefit from a status which ensures their impartiality from all parties at trial.

## **V. Fundamental freedoms**

Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2005/35, paras. 87, 88, and 94 to 102)

### *Recommendations regarding disappearances of political activists*

87. The Special Rapporteur calls upon the Government to reopen the cases of the disappearances of Mr. Zakharka, Mr. Hanchar, Mr. Krasowski and Mr. Zavadski, and to avail itself of the assistance of qualified and impartial international criminal experts, with a view to launching an independent and transparent investigation; finding and bringing to justice the perpetrators of the acts; and informing the families of the fates of their missing relatives.

88. The Special Rapporteur further calls for fair and just compensation to the families of the disappeared political activists to be made promptly.

### *Recommendation regarding freedom of the media*

94. The Special Rapporteur calls upon the Government to remove all forms of administrative, financial and legal restrictions on the freedom of the media that are in contravention of international human rights standards. Administrative harassment practices such as exercising indirect pressure through printing and distribution companies must cease, and the system of licensing and registration should to be overhauled in order to permit the widest possible dissemination of independent electronic and print media. All forms of direct and indirect

ensorship must be suppressed effectively and fully in accordance with article 33 of the Constitution of Belarus. Attacks and threats against journalists must be investigated seriously and perpetrators dealt with in accordance with the law.

*Recommendations regarding freedom of assembly*

95. The Special Rapporteur calls upon the Government to remove all forms of administrative, financial and legal restrictions on the right of persons and organizations, individually and in cooperation with others, to effectively protect and promote human rights in Belarus.

96. The system of registration of organizations and payment of foreign grants needs to be brought in line with highest existing international standards, as laid down in the Declaration on human rights defenders and other sources of international law.

97. Attacks and threats against individual human rights defenders and political activists must be investigated seriously and perpetrators dealt with in accordance with the law. Those human rights defenders and political activists who are brought to justice for administrative or criminal violations must be accorded the highest standards of fair trial.

*Recommendation regarding freedom of association*

98. The Special Rapporteur recalls the recommendations of the ILO Commission of Inquiry, and urges the Government to implement them fully and without delay.

99. The Special Rapporteur recommends an independent review of the ongoing contractual reform, and urges the Government to ensure that changes to the contractual status of workers and employment security resulting from these reforms are not used as a means of administrative harassment and intimidation.

*Recommendations regarding freedom of religion*

100. The Special Rapporteur calls upon the Government to implement effective measures to guarantee equality of all religions, in accordance with the Constitution of Belarus. Onerous registration and permit procedures need to be reviewed and simplified in order to ensure effective equality before the law for all religious communities.

*Recommendation regarding political rights*

101. The Special Rapporteur calls upon the Government of Belarus to ensure respect for international standards for democratic elections in all future electoral procedures and to investigate without delay all allegations of electoral fraud brought to its attention by domestic and international observers with respect to the elections and referendum held in October 2004.

102. The refusal of the Belarus authorities to cooperate with the Special Rapporteur is to be deplored. However, the Special Rapporteur is of the opinion that his mission, even in unfriendly circumstances, provided welcome moral support to all democratic forces in and outside Belarus who are working to promote and defend respect for human rights. At the same time, it has undoubtedly encouraged the governmental authorities of Belarus to consider the issue more carefully and to understand that their relations with the international democratic community depend on their capacity to respect human rights and to improve their country's human rights record. Such endeavors should therefore further continue.

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.3, paras. 80 and 86)

80. A main concern within the mandate of the Working Group is also the restriction imposed to freedom of expression and association by the arrest of several political opponents and by the prohibition of some NGOs. Finally, the Working Group notices with preoccupation the frequent use of administrative detention which allows for the arrest and detention of a person during a certain period of time without grounds or suspicions.

86. The Working Group recommends amendments to the provisions of internal criminal norms in the light of international and constitutional norms, to bring to an end the possibility of arresting people for peaceful demonstrations, disseminating information or exercising their rights to freedom of opinion and expression. The Working Group also invites the Government to reconsider the legal framework regarding administrative detention. The State should in priority:

- a) Ensure that administrative detention will not be misused to circumvent the legal time limits on detention without charges, or to obtain information from witnesses in pending cases, or from persons who may be charged at a later stage;
- b) Ensure that administrative detention is not used to repress peaceful demonstrations, the dissemination of information or the exercise of freedom of opinion and expression;
- c) Provide all persons deprived of their liberty for administrative offences with a public and adversarial procedure that guarantees a fair trial as defined by Article 14 of the International Covenant on Civil and Political Rights;
- d) Provide the homeless, illegal immigrants, undocumented persons and foreigners awaiting deportation an effective judicial procedure that allows them to challenge the lawfulness of their detention.

**VI. Economic and Social Rights**

n/a

**VII. Cultural Rights**

n/a

**VIII. Situation of specific groups**

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.3, paras. 79, 85, 87 and 88)

○ **Vulnerable detainees**

79. Finally, the Working Group is preoccupied by the lack of a separate criminal procedure for juvenile offenders.

85. The Working Group encourages the Government to move forward in the establishment of a new juvenile criminal system in conformity of the Convention of the Rights of Child to which Belarus is a party. In any case, children should not be held in such institutions as SIZO and in quarters with adults. In case of detention, they should have, at any stage of their detention, more open contacts with the outside world, family and friends.

○ **Detention in psychiatric hospitals**

88. The Working Group recommends that the judicial decision of forced placement in a psychiatric hospital should be taken in the presence of the person concerned, of her family and her lawyer, and that an adversarial judicial review should be provided periodically.

○ **Jurisdiction of Military Courts over civilians**

87. The Working Group invites the Government to adjust the legal framework regarding the organization, functions and competence of the military courts in order to comply with international norms. Competence of military tribunals should be limited to strictly military offences committed by military personnel. Proceedings against decisions of military tribunals, especially regarding challenges to the lawfulness, should be conducted before civilian jurisdictions.

**X. Comments from the Government**<sup>3</sup>

Observations of the Government of Belarus to the Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2005/G/11)

The Republic of Belarus has always been committed to the cause of human rights protection and expressed its willingness to a constructive and equal dialogue on all issues linked to human rights promotion. Belarus is indeed cooperating with international human rights machinery. On the invitation of the Government, in 1997 the Special Rapporteur on the Right to Freedom of Opinion and Expression visited Belarus, in 2000 - the Special Rapporteur on the Independence of Judges and Lawyers. The most recent example is the visit of the Working Group on Arbitrary Detention to Belarus in August of this year. Belarus intends to continue interaction with these and other thematic procedures of the Commission on Human Rights.

The Commission's activity has been seriously undermined by excessive politicization of its agenda in recent years. This is a clear consequence of the abuse by some countries of human rights issues as a tool to achieve selfish political goals. We believe that the current practice of considering and adopting resolutions on specific countries does not correspond to the spirit of cooperation between states and the noble goals of this body.

The CHR resolution 2004/14 is a manifest example of double standards approach and a mockery of the principles of the Commission on Human Rights. This resolution is entirely politically motivated and based on unjust biased allegations towards a sovereign country pursuing independent foreign policy. In a multilateral forum one cannot achieve any progress in discussing the human rights issues in the absence of a minimum degree of trust, mutual respect and fairness. It is not accidental that even despite the unprecedented pressure from the USA and the European Union the majority of CHR Members did not support that resolution. The Republic of Belarus has repeatedly stated that we totally reject all the allegations and do not accept the resolution based thereon neither in letter nor in spirit. The content of the resolution has nothing to do with the tasks of international cooperation in the area of human rights. As a matter of principle, the Republic of Belarus stands against the practice of considering country-specific resolutions, as this is counterproductive and runs counter to the very principle of a constructive and respectful dialogue based on universal, non-selective and objective approach. The overwhelming majority of UN

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<sup>3</sup> As published as official documents of the CHR.

member states share this position. It was impressively confirmed by the decision of the 59th session of the General Assembly not to consider a draft resolution on situation of human rights in Belarus presented by the US and EU. In view of the above, the Republic of Belarus reiterates its firm rejection of the resolution 2004/14, including mandate of the Special Rapporteur contained therein.

## BRAZIL

### Introduction

The Government of Brazil has extended a standing invitation to thematic special procedures of the Commission on Human Rights.

During the period under review, , the following special procedures visited Brazil:

- The Special Rapporteur on adequate housing visited the country from 30 May to 13 June 2004 (please refer to document E/CN.4/2005/48/Add.3).
- The Special Rapporteur on the independence of judges and lawyers visited the country from 13 to 22 October 2004 (please refer to document E/CN.4/2005/60/Add.3).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.3, paras. 80(a)(b)(d)(i)(j)):

80. (a) In order to ensure a holistic implementation of the right to adequate housing, there is an urgent need for a comprehensive national housing policy encompassing both urban and rural considerations, and equally comprehensive national housing legislation binding together existing laws and programmes. The Special Rapporteur encourages the development of the new National Housing Policy but reminds the Government that such an overarching instrument needs to incorporate relevant international human rights law and reflect relevant general comments and general recommendations issued by human rights treaty monitoring bodies. In this regard, the Government should consider elaborating a housing allowance scheme to provide for housing improvements for the poorest segments of society. The Special Rapporteur supports the use of the Workers Guarantee Fund to provide resources to the National Popular Housing Fund, and also recommends that the Ministry of Cities and the National Cities Council have the competence to determine the use of resources from the Fund;

(b) The process of land and agrarian reform needs to be enhanced, including through the allocation of adequate resources for the Urbanization, Regularization and Integration of Precarious Settlements Programme created to help municipalities carry out their land regularization programmes. Legislation that deals with different forms of tenure and land title must be revised in a way that will harmonize and simplify the issuance of title deeds, including in informal urban and rural settlements, indigenous lands and Quilombola communities. The Special Rapporteur supports recommendations previously made by other actors, including the Special Rapporteur on the right to food (see E/CN.4/2004/Add.1), indicating that there is an urgent need to speed up agrarian reform and related processes for expropriation and the granting of land titles. The Special Rapporteur recommends that an interministerial task force be established specifically to address the issues of redistribution of land and appropriation of large land holdings in accordance with constitutional provisions that guarantee the social function of land;

(d) Urgent attention must be given to those living in distressed housing and living conditions, including the homeless, slum dwellers, and families living in temporary rural camps (acampamentos) without basic amenities pending the allocation of land. The Government, in addition to programmes such as the National Programme to Support Sustainable Land Regularization and the Rural Housing Programme, may wish to elaborate a national policy on the regularization of land occupations;

(i) The Public Prosecutor should be given an explicit mandate to protect economic, social and cultural rights, including the right to adequate housing. Extensive training and awareness-building for the judiciary with respect to the right to adequate housing as a component

of the right to an adequate standard of living is imperative. In addition to agrarian courts, the Government is encouraged to create special courts to deal with land-related issues including adverse possession, land demarcation and regularization conflicts, disputes over judicial records of urban and rural land conflicts, and forced evictions and displacement;

(j) There is need for education and training for civil servants and local government officials to ensure effective implementation of the Statute of the City. Master plans must reflect the territorial, economic and cultural realities of local communities.

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.3, paras. 59, 103-105, 108 b), 110, 112-114):

59. El Relator Especial estima necesario promover el conocimiento y aplicación del derecho internacional, en particular los tratados sobre derechos humanos, por parte de los jueces. En San Pablo, por ejemplo, el primer curso de derechos humanos para magistrados, tuvo lugar recién en el año 2000.

103. Uno de los principales problemas que aquejan a la justicia brasileña es el acceso de la población; para darle respuesta, resulta urgente e imperativo reforzar la Defensoría Pública. La aprobación de la reforma judicial es un paso importante pero no suficiente. El Relator Especial recomienda:

- a. monitorear a medio y a largo plazo el impacto de la reforma con relación a la capacidad operativa de la Defensoría Pública;
- b. conferir autonomía financiera y administrativa también a la Defensoría Pública de la Unión, como se ha hecho con la Defensoría Pública estadual;
- c. crear la Defensoría Pública en los Estados donde todavía no existe. El Relator Especial insta a que en el Estado de San Pablo, no obstante la labor meritoria que desempeña la OAB, el proyecto de ley que prevé la creación de un modelo de Defensoría Pública sumamente innovador sea presentado y debatido en sede legislativa cuanto antes.

104. Los crímenes y delitos que se cometen contra niños, niñas y adolescentes es algo muy preocupante. En este ámbito, cabría dar prioridad a la plena implementación del sistema previsto por el Estatuto del Niño y Adolescente de 1990. En particular, es preciso crear los tribunales especializados para los crimines contra niños, niñas y adolescentes así como los Núcleos de Atención a la Infancia y al Adolescente en las Defensorías Públicas.

105. En relación con la justicia militar, el Relator Especial recomienda limitar su competencia sólo a los delitos de naturaleza militar y atribuir todos los delitos cometidos por policías militares contra civiles a la competencia de la justicia común.

108. En cuanto a la regulación de la carrera de los magistrados, el Relator Especial recomienda:

(...)

- b. iniciativas de formación permanente, a lo largo de la carrera de los magistrados, particularmente en derechos humanos y derecho internacional; el manual titulado *Human Rights in the Administration of Justice: A Manual of Human Rights for Judges, Prosecutors and Lawyers* (publicación N° 9 de la serie de documentos de capacitación profesional), que figura en el sitio web de la Oficina del Alto Comisionado ([www.ohchr.org](http://www.ohchr.org)), se recomienda vivamente su enseñanza en las universidades y difusión en las asociaciones profesionales de jueces y abogados. Recomienda asimismo la difusión de los Principios de Bangalore sobre la conducta judicial.

110. Es fundamental recoger datos estadísticos sobre el funcionamiento de la justicia para monitorear la eficacia de la prestación judicial. El Relator Especial recomienda la implementación de un sistema avanzado de recolección de datos sobre este tema y el establecimiento de indicadores para evaluar las mejoras en la prestación judicial. Este ejercicio será de particular utilidad para medir el impacto de los cambios introducidos por la reforma judicial.

112. Para conferir mayor eficacia al proceso judicial y teniendo en cuenta que la reforma aprobada otorga a la celeridad del proceso en el ámbito judicial y administrativo el carácter de derecho fundamental, las reformas que se introduzcan deberán preservar las garantías existentes y al mismo tiempo simplificar su funcionamiento. Ello mediante la reducción de recursos y agilizando los tramites para que la decisión judicial reúna la doble condición de eficaz y oportuna.

113. Se recomienda vivamente que los jueces, fiscales, abogados y defensores apliquen los instrumentos internacionales de derechos humanos ratificados por Brasil, e invoquen sus normas en sus decisiones y/o demás actuaciones ante la justicia.

114. Frente a la complejidad del crimen organizado los esfuerzos nacionales para su combate resultan insuficientes. Por ello resulta imprescindible conjugar esfuerzos entre todos los actores que participan del proceso y lograr canales de cooperación entre países, sobre todo en las zonas de frontera. En ese sentido las iniciativas de cooperación internacional en curso se revelan manifiestamente insuficientes.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.3, paras 62 and 107):

62. El Relator Especial pudo observar que el sistema judicial está compuesto, esencialmente, por personas blancas y de sexo masculino. Una excepción se constata en el Tribunal de Justicia del Estado del Pará integrado mayoritariamente por mujeres. Sin embargo, la discriminación contra la mujer es notoria, en tanto representa el 5 por ciento de los altos cargos en el poder judicial y en el Ministerio Público. Esta situación se agrava en el caso de afrodescendientes e indígenas, que no alcanzan a estar representados ni en el 1 por ciento.

107. La discriminación de la que son objeto algunos sectores manifiestamente vulnerables, hace recomendable la visita del Relator Especial sobre racismo y discriminación racial.

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.3, paras. 104 and 114):

104. Los crímenes y delitos que se cometen contra niños, niñas y adolescentes es algo muy preocupante. En este ámbito, cabría dar prioridad a la plena implementación del sistema previsto por el Estatuto del Niño y Adolescente de 1990. En particular, es preciso crear los tribunales especializados para los crimines contra niños, niñas y adolescentes así como los Núcleos de Atención a la Infancia y al Adolescente en las Defensorías Públicas.



114. Frente a la complejidad del crimen organizado los esfuerzos nacionales para su combate resultan insuficientes. Por ello resulta imprescindible conjugar esfuerzos entre todos los actores que participan del proceso y lograr canales de cooperación entre países, sobre todo en las zonas de frontera. En ese sentido las iniciativas de cooperación internacional en curso se revelan manifiestamente insuficientes.

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.3, paras. 59, 103-113, 115-116):

59. El Relator Especial estima necesario promover el conocimiento y aplicación del derecho internacional, en particular los tratados sobre derechos humanos, por parte de los jueces. En San Pablo, por ejemplo, el primer curso de derechos humanos para magistrados, tuvo lugar recién en el año 2000.

103. Uno de los principales problemas que aquejan a la justicia brasileña es el acceso de la población; para darle respuesta, resulta urgente e imperativo reforzar la Defensoría Pública. La aprobación de la reforma judicial es un paso importante pero no suficiente. El Relator Especial recomienda:

- a. monitorear a medio y a largo plazo el impacto de la reforma con relación a la capacidad operativa de la Defensoría Pública;
- b. conferir autonomía financiera y administrativa también a la Defensoría Pública de la Unión, como se ha hecho con la Defensoría Pública estadual;
- c. crear la Defensoría Pública en los Estados donde todavía no existe. El Relator Especial insta a que en el Estado de San Pablo, no obstante la labor meritoria que desempeña la OAB, el proyecto de ley que prevé la creación de un modelo de Defensoría Pública sumamente innovador sea presentado y debatido en sede legislativa cuanto antes.

104. Los crímenes y delitos que se cometen contra niños, niñas y adolescentes es algo muy preocupante. En este ámbito, cabría dar prioridad a la plena implementación del sistema previsto por el Estatuto del Niño y Adolescente de 1990. En particular, es preciso crear los tribunales especializados para los crimines contra niños, niñas y adolescentes así como los Núcleos de Atención a la Infancia y al Adolescente en las Defensorías Públicas.

105. En relación con la justicia militar, el Relator Especial recomienda limitar su competencia sólo a los delitos de naturaleza militar y atribuir todos los delitos cometidos por policías militares contra civiles a la competencia de la justicia común.

106. Frente a las amenazas y actos de violencia sufridos por magistrados, abogados y defensores, sobre todo aquellos que se ocupan de procesos sobre cuestiones sociales (como son por ejemplo, la de la tierra, los indígenas o la defensa del medio ambiente), el Relator Especial recomienda la realización de una visita por parte de la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos.

107. La discriminación de la que son objeto algunos sectores manifiestamente vulnerables, hace recomendable la visita del Relator Especial sobre racismo y discriminación racial.

108. En cuanto a la regulación de la carrera de los magistrados, el Relator Especial recomienda:

- a. la realización de concursos anónimos para ingresar en la profesión de magistrado;
- b. iniciativas de formación permanente, a lo largo de la carrera de los magistrados, particularmente en derechos humanos y derecho internacional; el manual titulado *Human Rights in the Administration of Justice: A Manual of Human Rights for Judges, Prosecutors and Lawyers* (publicación N° 9 de la serie de documentos de capacitación profesional), que figura en el sitio web de la Oficina del Alto Comisionado ([www.ohchr.org](http://www.ohchr.org)), se recomienda vivamente su enseñanza en las universidades y difusión en las asociaciones profesionales de jueces y abogados. Recomienda asimismo la difusión de los Principios de Bangalore sobre la conducta judicial.
- c. el establecimiento de criterios objetivos para evaluar el mérito como requisito para las promociones;
- d. la implementación de acciones positivas para favorecer una mejor representación de mujeres, negros e indígenas en el poder judicial;
- e. la realización de concursos públicos para el personal auxiliar de los tribunales;
- f. adoptar medidas tendientes a posibilitar alguna forma de control social sobre el nombramiento de los cargos más altos del sistema judicial, en particular del STF;
- g. se adopten medidas tendientes a eliminar patrones de discriminación basados en género, etnia y otros, en la esfera judicial.

109. Es necesario fomentar iniciativas de acercamiento a la población por parte de los actores del sistema judicial. Experiencias como "Escuchar a la Comunidad" en Río Grande del Sur, los Centros de Integración Ciudadana en San Pablo y los Juzgados Especiales Federales Itinerantes están orientados en esta dirección y deben ser reforzadas y multiplicadas. Otro hecho que acerca los jueces a la población es la visita a las cárceles con regularidad, tal como lo establece la ley.

110. Es fundamental recoger datos estadísticos sobre el funcionamiento de la justicia para monitorear la eficacia de la prestación judicial. El Relator Especial recomienda la implementación de un sistema avanzado de recolección de datos sobre este tema y el establecimiento de indicadores para evaluar las mejoras en la prestación judicial. Este ejercicio será de particular utilidad para medir el impacto de los cambios introducidos por la reforma judicial.

111. Para evitar abusos, las autoridades deberían establecer límites al uso del secreto (sigilo) y, en los casos en que proceda, informar a las partes sobre el estado de la causa.

112. Para conferir mayor eficacia al proceso judicial y teniendo en cuenta que la reforma aprobada otorga a la celeridad del proceso en el ámbito judicial y administrativo el carácter de derecho fundamental, las reformas que se introduzcan deberán preservar las garantías existentes y al mismo tiempo simplificar su funcionamiento. Ello mediante la reducción de recursos y agilizando los tramites para que la decisión judicial reúna la doble condición de eficaz y oportuna.

113. Se recomienda vivamente que los jueces, fiscales, abogados y defensores apliquen los instrumentos internacionales de derechos humanos ratificados por Brasil, e invoquen sus normas en sus decisiones y/o demás actuaciones ante la justicia.

115. Sería oportuno identificar y evaluar en forma sistemática las experiencias positivas que se realizan en el orden federal, estadual y municipal con el fin de estudiar su viabilidad e implementación en otros lugares. En ese sentido, el poder ejecutivo podría realizar un encuentro nacional con el objeto de conocerlas y evaluar su viabilidad. Además de significar un rico intercambio, ello permitiría promover su aplicación en otras localidades, dejando su adaptación y ejecución a cargo de las autoridades estaduais.

116. El gobierno brasileño cuenta con la posibilidad de recurrir a la cooperación técnica del sistema de las Naciones Unidas para implementar estas recomendaciones. En particular, el equipo de Naciones Unidas podría brindar asistencia técnica en áreas como: a) elaboración de indicadores para evaluar el funcionamiento de la justicia y metodologías para la recolección de datos estadísticos; b) identificación y análisis de experiencias positivas susceptibles de ser reproducidas; c) elaboración de modelos de acciones positivas para fomentar una mejor representación en el poder judicial; d) la organización de iniciativas de cooperación internacionales en el sector judicial.

## **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.3, paras. 80(a)(b)(e)(g)(i)):

80. (a) In order to ensure a holistic implementation of the right to adequate housing, there is an urgent need for a comprehensive national housing policy encompassing both urban and rural considerations, and equally comprehensive national housing legislation binding together existing laws and programmes. The Special Rapporteur encourages the development of the new National Housing Policy but reminds the Government that such an overarching instrument needs to incorporate relevant international human rights law and reflect relevant general comments and general recommendations issued by human rights treaty monitoring bodies. In this regard, the Government should consider elaborating a housing allowance scheme to provide for housing improvements for the poorest segments of society. The Special Rapporteur supports the use of the Workers Guarantee Fund to provide resources to the National Popular Housing Fund, and also recommends that the Ministry of Cities and the National Cities Council have the competence to determine the use of resources from the Fund;

(b) The process of land and agrarian reform needs to be enhanced, including through the allocation of adequate resources for the Urbanization, Regularization and Integration of Precarious Settlements Programme created to help municipalities carry out their land regularization programmes. Legislation that deals with different forms of tenure and land title must be revised in a way that will harmonize and simplify the issuance of title deeds, including in informal urban and rural settlements, indigenous lands and Quilombola communities. The Special Rapporteur supports recommendations previously made by other actors, including the Special Rapporteur on the right to food (see E/CN.4/2004/Add.1), indicating that there is an urgent need to speed up agrarian reform and related processes for expropriation and the granting of land titles. The Special Rapporteur recommends that an interministerial task force be established specifically to address the issues of redistribution of land and appropriation of large land holdings in accordance with constitutional provisions that guarantee the social function of land;

(e) The Government should proceed with utmost caution regarding privatization of housing and essential services related to the enjoyment of the right to adequate housing, such as water, electricity and sanitation. Protective measures and guarantees must be established to ensure that the National Programme of Privatization does not compromise human rights, in particular those of minorities, women and the poor;

(g) The Programme of Subsidies for Social-Interest Housing should be expanded to include more families;

(i) The Public Prosecutor should be given an explicit mandate to protect economic, social and cultural rights, including the right to adequate housing. Extensive training and awareness-building for the judiciary with respect to the right to adequate housing as a component of the right to an adequate standard of living is imperative. In addition to agrarian courts, the Government is encouraged to create special courts to deal with land-related issues including adverse possession, land demarcation and regularization conflicts, disputes over judicial records of urban and rural land conflicts, and forced evictions and displacement;

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.3, paras. 80(b)(c)(d)(e)(f)):

80. (b) The process of land and agrarian reform needs to be enhanced, including through the allocation of adequate resources for the Urbanization, Regularization and Integration of Precarious Settlements Programme created to help municipalities carry out their land regularization programmes. Legislation that deals with different forms of tenure and land title must be revised in a way that will harmonize and simplify the issuance of title deeds, including in informal urban and rural settlements, indigenous lands and Quilombola communities. The Special Rapporteur supports recommendations previously made by other actors, including the Special Rapporteur on the right to food (see E/CN.4/2004/Add.1), indicating that there is an urgent need to speed up agrarian reform and related processes for expropriation and the granting of land titles. The Special Rapporteur recommends that an interministerial task force be established specifically to address the issues of redistribution of land and appropriation of large land holdings in accordance with constitutional provisions that guarantee the social function of land;

(c) Housing policies and programmes, including housing finance schemes, should strengthen their focus on the poor and vulnerable segments of the population. A reduction of the budgetary surplus target would release funds to ensure the progressive realization of economic, social and cultural rights, including housing, for the very poor, while still respecting surplus conditions imposed by international financial institutions;

(d) Urgent attention must be given to those living in distressed housing and living conditions, including the homeless, slum dwellers, and families living in temporary rural camps (acampamentos) without basic amenities pending the allocation of land. The Government, in addition to programmes such as the National Programme to Support Sustainable Land Regularization and the Rural Housing Programme, may wish to elaborate a national policy on the regularization of land occupations;

(e) The Government should proceed with utmost caution regarding privatization of housing and essential services related to the enjoyment of the right to adequate housing, such as water, electricity and sanitation. Protective measures and guarantees must be established to ensure that the National Programme of Privatization does not compromise human rights, in particular those of minorities, women and the poor;

(f) There is a need to strengthen interministerial cooperation to ensure that attention is focused on the human rights of indigenous peoples in Brazil. The Special Rapporteur would like to urge the Government to consider creating a special secretariat to allow for a comprehensive approach in matters relating to the human rights of indigenous peoples, including housing and land rights.

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.3, paras. 62, 104 and 106):

62. El Relator Especial pudo observar que el sistema judicial está compuesto, esencialmente, por personas blancas y de sexo masculino. Una excepción se constata en el Tribunal de Justicia del Estado del Pará integrado mayoritariamente por mujeres. Sin embargo, la discriminación contra la mujer es notoria, en tanto representa el 5 por ciento de los altos cargos en el poder judicial y en el Ministerio Público. Esta situación se agrava en el caso de afrodescendientes e indígenas, que no alcanzan a estar representados ni en el 1 por ciento.

104. Los crímenes y delitos que se cometen contra niños, niñas y adolescentes es algo muy preocupante. En este ámbito, cabría dar prioridad a la plena implementación del sistema previsto por el Estatuto de 1990. En particular, es preciso crear los tribunales especializados para los crimines contra niños, niñas y adolescentes así como los Núcleos de Atención a la Infancia y al Adolescente en las Defensorías Públicas.

106. Frente a las amenazas y actos de violencia sufridos por magistrados, abogados y defensores, sobre todo aquellos que se ocupan de procesos sobre cuestiones sociales (como son por ejemplo, la de la tierra, los indígenas o la defensa del medio ambiente), el Relator Especial recomienda la realización de una visita por parte de la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos.

## **IX. The right to development and international cooperation**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.3, paras. 80(c)(h)):

80. (c) Housing policies and programmes, including housing finance schemes, should strengthen their focus on the poor and vulnerable segments of the population. A reduction of the budgetary surplus target would release funds to ensure the progressive realization of economic, social and cultural rights, including housing, for the very poor, while still respecting surplus conditions imposed by international financial institutions;

(h) The international community should support the efforts of the Government of Brazil to de-link initiatives relevant to meeting the Millennium Development Goals from those aimed at debt repayment;

## **X. Comments from the Government**<sup>4</sup>

n/a

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<sup>4</sup> As published as official documents of the CHR.

## **BURUNDI**

### **Introduction**

During the period under review, the Independent Expert on the situation of human rights in Burundi made his first visit in the country (please refer to document E/CN.4/2005/118).

### **I. Institutional and legal framework for the promotion and protection of human rights**

Independent Expert on the situation of human rights in Burundi (E/CN.4/2005/118, paras. 73 and 74):

73. The independent expert would like to encourage the Burundian authorities to press ahead with the establishment of the institutions provided for by the Arusha Agreement, especially those relating to human rights, and in particular the establishment of an independent national human rights institution.

74. He strongly recommends that the Government act promptly and transparently to implement the conclusions of the independent commission on issues relating to prisoners provided for by the Arusha Agreement.

### **II. Non-discrimination and equality before the law**

n/a

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Independent Expert on the situation of human rights in Burundi (E/CN.4/2005/118, para. 71):

71. The independent expert addresses an urgent appeal to all the belligerents, in particular in the province of Bujumbura Rural, to respect the rights of the civilian population and especially the right to life, security and inviolability of the person as well as to discontinue all hostilities.

### **IV. Administration of justice and the rule of law**

Independent Expert on the situation of human rights in Burundi (E/CN.4/2005/118, para. 68):

68. The independent expert was informed of a certain ambiance of fear before the elections among the population due to negative experiences in the past, the most recent being the crisis which followed the elections in 1993. Tension between the two ethnic groups is present and there is distrust among the political parties within and outside the transitional Government. They remain highly divided on essential issues, in particular the issue of impunity regarding the successive massacres in the last 40 years. In this respect, he welcomes the mediation in the Burundian conflict and commends countries in the sub-region on the progress that they have made towards securing a lasting peace solution.

### **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

n/a

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Independent Expert on the situation of human rights in Burundi (E/CN.4/2005/118, paras. 60, 70, 72, 75 and 76):

### **Refugees**

60. Some representatives of the Tutsi group are claiming that genocide against them is in the making. To substantiate their claim, they point to the Gatumba massacre, the killing of Tutsi motivated by accusations of witchcraft and poisoning, and intimidation and threats which led to the flight of some 500 Burundian Tutsi to Rwanda. Moreover, an issue of particular concern is the fact that the large majority of the population is in illegal possession of small arms.

70. The sub-regional context is very explosive. This was once again demonstrated when the survivors from the Gatumba massacre were prevented from returning to the Democratic Republic of the Congo. In this regard, the independent expert supports the organization and holding of an international conference on peace, security, democracy and development in the Great Lakes region, as advocated by the Security Council and the Secretary-General.

72. He strongly condemns the massacre committed against the civilian refugee population at Gatumba, Bujumbura, and would like to encourage the immediate initiation of national and international judicial proceedings to ensure that the perpetrators of the killings and those that aided and abetted them are brought to justice.

### **Children**

75. The independent expert also recommends that the Burundian authorities, and in particular CNDD-FDD, speed up the demobilization of child soldiers.

### **Women**

76. Seriously concerned with the observed trend of rising sexual violence against women, the independent expert urges the Government to take a clear and strong position on this issue and to combat this phenomenon in collaboration with Burundian civil society.

## **IX. The right to development and international cooperation**

Independent Expert on the situation of human rights in Burundi (E/CN.4/2005/118, paras. 77 to 79):

77. The independent expert would like to recommend to the international community that the funds pledged at the Paris, Geneva and Brussels conferences be released and requests the

international community to support the efforts of the Government of Burundi to encourage respect for and promotion of human rights and to secure lasting peace.

78. Funding available to the independent expert to discharge his mandate is grossly disproportionate to the burden and magnitude of the task. He accordingly recommends that additional funding be made available in order to enable him to discharge his mandate with greater diligence.

79. The independent expert commends and supports the efforts of United Nations system agencies in Burundi, in particular OHCHR and ONUB, the international community as well as civil society to ensure better protection and promotion of human rights and encourage them to strengthen their cooperation in this field.

## **X. Comments from the Government**<sup>5</sup>

n/a

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<sup>5</sup> As published as official documents of the CHR.



## CAMBODIA

### Introduction

During the period under review, the Special Representative of the Secretary-General on the situation of human rights in Cambodia visited the country (please refer to document E/CN.4/2005/116).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2005/116, paras. 78 to 81 and 105 to 107):

78. The Special Representative has made wide-ranging and detailed recommendations in his previous reports to the Commission on Human Rights and the General Assembly, many of which he finds necessary to reiterate since the problems that they were meant to address remain. Some of the recommendations below respond to concerns that arose during his eleventh mission.

79. The Commune Councils should be allowed to select village chiefs as provided for in article 30 of the Law on Commune Administration. The required Instruction on Formalities and Procedures for Selection of Village Chiefs should be urgently issued by the Ministry of the Interior.

80. The constitutional provision regarding Senate elections should be respected.

81. The National Assembly should ensure that parliamentarians from the opposition party are given seats in the Assembly's nine commissions.

105. The Government should ensure that Cambodia meets its obligations under the international human rights treaties to which it is a party and implement the recommendations made by the international treaty bodies.

106. Cambodia should ratify the Optional Protocol to the International Covenant on Civil and Political Rights, which it signed on 27 September 2004.

107. Cambodia should become party to Indigenous and Tribal Peoples Convention, 1989 (No. 169) the most comprehensive instrument of international law that protects the rights of indigenous and tribal peoples.

### II. Non-discrimination and equality before the law:

n/a

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity:**

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2005/116, paras. 82 to 86):

82. The Government must take urgent measures to ensure that past and present violations of human rights are investigated thoroughly and without undue interference, and that those responsible for such violations are brought to justice.

83. The international community should insist on the conduct of thorough, impartial and credible investigations into the most serious violations of human rights, and the prosecution of those responsible. The murder of trade union leader Chea Vichea in January 2004 is a case in point.

84. International organizations, Governments and donor agencies should encourage and support activities that raise awareness of the nature and specifics of the problem of impunity and help promote a dialogue with the Government to end it.

85. International organizations and donor agencies should more fully support local organizations working to defend human rights to enable them to fulfill their duties in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

86. An independent board of inquiry, comprised of responsible representatives from political parties, NGOs and religious organizations, should be established to examine all acts of mob violence, why these attacks occur and how to prevent them, and to scrutinize police and prosecutorial conduct in these attacks. This body should have the power to recommend criminal or disciplinary measures.

### **IV. Administration of justice and the rule of law:**

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2005/116, paras. 87 and 88):

87. The Government should take immediate steps to end executive interference in the affairs of the judiciary and the Supreme Council of the Magistracy.

88. In order to provide effective support to reform of the justice sector, donor agencies need more fully to take into account the political complexities that have so far rendered most interventions in this field ineffectual.

### **V. Fundamental freedoms:**

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2005/116, paras. 89 to 92 and 102 to 104):

89. The Government should take immediate steps to ensure respect throughout Cambodia for the rights under the Constitution and international law to the freedoms of expression, association, assembly and to non-violent demonstration.

90. Until the Law on Demonstrations is redrafted to comply with Cambodia's treaty obligations, the authorities should read the current law in conformity with protected constitutional rights and article 21 of the International Covenant on Civil and Political Rights.

91. The Government should instruct provincial and local authorities to respect freedom of movement and to end the practice of requiring citizens and groups to obtain approval before traveling.

92. The Government should ensure that law enforcement officials disperse demonstrations and other gatherings only if absolutely necessary. In such cases, force should be used as a last resort, must always be reasonable, in proportion to the threat posed, and minimize damage or injury to persons and property.

102. The Government should ensure that reported cases of corruption are thoroughly investigated and prosecuted within existing law. Data should be collected to enable monitoring of progress.

103. The draft Law against Corruption should be the subject of full public consultation and comply with the provisions of the United Nations Convention against Corruption. Cambodia should take immediate steps to become party to the Convention.

104. The Government should prepare, through a consultative process, a law on freedom of information and ensure its adoption and implementation.

## **VI. Economic and social rights:**

### **Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2005/116, paras. 93 to 101):**

93. The Government must fully disclose information on all concessions, including contracts and maps, and information about concession companies and their shareholders.

94. The Government should cancel contracts where concessionaires have committed serious contractual breaches or breaches of the law, and ensure that all contracts comply with the law.

95. Alternative forms of agricultural development for the benefit of Cambodia's rural populations should be pursued. The system of land concessions for economic purposes needs to be reconsidered.

96. The sub-decree of the 2001 Land Law relating to the classification of "State public property" and "State private property" must be adopted promptly and such classification undertaken.

97. The Government should expedite the adoption of the sub-decree on procedures for granting and reducing land concessions for economic purposes. Any exemptions to the 10,000-hectare limit established in the Land Law should be narrowly defined.

98. The titling process for indigenous community property must be completed before any new concessions are granted. The sub-decree which will facilitate the titling process must be adopted

promptly. The Government should regularly disclose revenues gained from concessions, including disaggregated data.

99. Concessionaires should provide sustainable management plans and comply with the mandatory environmental impact assessment process. The Government should make social impact assessments mandatory.

100. Company security guards and militias on concessions and rubber plantations should be disarmed, in compliance with the regulations in force.

101. The Government should end forced evictions and approve and implement the “Declaration of principles for best practices in housing and pro-poor development in Cambodia” developed by the Housing Rights Task Force in collaboration with the Municipality of Phnom Penh.

**VII. Cultural rights:**

n/a

**VIII. Situation of specific groups:**

n/a

**IX. The right to development and international cooperation:**

n/a

**X. Comments from the Government**<sup>6</sup>

n/a

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<sup>6</sup> As published as official documents of the CHR.

## CANADA

### Introduction

During the period under review, the Special Rapporteur on the human rights of indigenous peoples visited the country (please refer to document E/CN.4/2005/88/Add.3).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras. 97 to 100, 108 and 109)

97. That new legislation on Aboriginal rights is enacted by the Parliament of Canada, as well as provincial legislatures, in line with the proposals made by RCAP; and that the structure and functions of the public administration dealing with Aboriginal issues, such as INAC, be adapted to a human rights centred and participatory development approach; and that Canada fully implement and renew existing treaties in order to protect the rights and interests of Aboriginal people and reconcile the interests of society as a whole with the terms of the treaties.

98. That the Government and Parliament take all necessary steps, in consultation with aboriginal peoples, to ensure the prompt ratification of ILO Convention No. 169.

99. That from a human rights perspective, it should be clearly established in the text and spirit of any agreement between an aboriginal people and a government in Canada, and supported by relevant legislation, that no matter what is negotiated, the inherent and constitutional rights of aboriginal peoples are inalienable and cannot be relinquished, ceded or released, and that Aboriginal peoples should not be requested to agree to such measures in whatever form or wording.

100. That an evaluation of the new self-government agreements be undertaken in conjunction with Aboriginal peoples themselves and independent legal, economic and other experts to allow for objective assessments of the achievements and problems of this policy thus far.

108. That the Canadian Human Rights Commission be enabled to receive complaints about human rights violations of First Nations, including grievances related to the Indian Act; and that section 67 of the Human Rights Act be repealed, as requested insistently by various organizations, including the Human Rights Commission, to which the Government of Canada agreed in principle in 2003.

109. That the competences of the Federal, provincial and territorial governments in their shared responsibility to promote and protect the human rights of Aboriginal peoples be redefined and coordinated so that such rights be effectively protected at all levels.

### II. Non-discrimination and equality before the law

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras.117 and 119)

117. That the various orders and levels of civil associations undertake joint and coordinated efforts to combat and eliminate anti-Aboriginal prejudice, racism, intolerance and stigmatization, just as is being done regarding visible minorities.

119. That the mass media provide a balanced and non-discriminatory view of the human rights needs and aspiration of Canada's Aboriginal people in order to help educate the general population about issues related to racism, discrimination, intolerance and social exclusion.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

### **IV. Administration of justice and the rule of law**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras. 114 and 115)

114. That efforts be increased at all levels to reduce and eliminate the overrepresentation of Aboriginal men, women and children in detention, in particular by establishing measurable outcomes, and that Aboriginal alternative justice institutions and mechanisms be officially recognized and fostered with the full participation of Aboriginal communities.

115. That the Government of Canada, in keeping with both its domestic constitutional jurisdiction and its international human rights obligations, immediately join and participate fully in the Ipperwash Judicial Inquiry.

### **V. Fundamental freedoms**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, para. 110)

110. That Aboriginal peoples should always be consulted in advance and be active participants in the design and execution of any development programme or project in their regions or territories or which may affect their living conditions, as provided for in ILO Convention No. 169; and that government and private enterprises engaged in such activities take into account the needs and interests of the affected Aboriginal people at all stages of these programmes and projects.

### **VI. Economic and social rights**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras. 101, 102, 105, 106, 107 and 111)

101. That the Government intensify its commendable measures to close the human development indicator gaps between Aboriginal and non-Aboriginal Canadians in the fields of health care, housing, education, welfare and social services.

102. That special attention is paid to the nexus between the Residential Schools restitution process, the transgenerational loss of culture and its attendant social problems such as adolescent suicide rates and family disorganization.

105. That adequate housing in a large number of Aboriginal communities be declared a priority objective, as recommended by RCAP, and that adequate credits, investments and other resources be appropriated to solve this urgent problem within the shortest possible time-frame.

106. That emergency measures be taken to address the critical issue of high rates of diabetes, tuberculosis and HIV/AIDS among Aboriginal people; and that aboriginal suicide be addressed as a priority social issue by the relevant public social service and health institutions.

107. That legislation be enacted and effective measures be implemented to expand the existing effectively usable lands and resources base of First Nations, Inuit and Métis communities to ensure their social, economic and cultural survival and well-being; and that regional treaty commissions and an Aboriginal Lands and Treaties Tribunal be established as recommended by RCAP.

111. That the generation of sustainable employment of Aboriginal people and their education and training to this end, in their own communities and territories and also within the broader regional economies in which they are located, with specific quantitative goals within a relevant time-frame, be considered a social policy objective and not be left solely to market forces.

## **VII. Cultural rights**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras. 103 and 104)

103. That concerted action is undertaken by all levels of government to guarantee the right to culturally sensitive and quality education of Aboriginal people and to decrease the number of school drop-outs and increase the number and quality of school graduates at all levels.

104. That culturally relevant education in Aboriginal languages be promoted at all school levels and made an objective of national educational policies, and that, in particular, article 23 of the Nunavut Agreement regarding education and training be implemented as a priority objective.

## **VIII. Situation of specific groups**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras. 112 and 113)

112. That the Government address with high priority the lack of legislative protection regarding on-reserve Matrimonial Real Property which places First Nation women living on reserves at a disadvantage.

113. That particular attention be paid by specialized institutions to the abuse and violence of Aboriginal women and girls, particularly in the urban environment.

## **IX. The right to development and international cooperation**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.3, paras. 116 and 120)

116. That, in the field of international human rights of indigenous peoples Canada continue to play a leading role as a regular and widely recognized donor to the voluntary funds for indigenous peoples and to the International Decade; and that it adopt an even more constructive leadership role in the process leading to the adoption of the Draft Declaration on the Rights of Indigenous Peoples, as demanded by numerous Canadian indigenous peoples' organizations and expected by many other organizations worldwide.

120. That the international community, and particularly the Arctic Council, take urgent action concerning the human impact of global warming and environmental pollution on Arctic peoples.

**X. Comments from the Government**<sup>7</sup>

n/a

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<sup>7</sup> As published as official documents of the CHR.



## CHAD

### Introduction

Au cours de la période concernée, l'experte indépendante sur la situation des droits de l'homme au Tchad a effectué une mission au Tchad (veuillez vous référer au document E/CN.4/2005/121).

### I. Cadre institutionnel et juridique pour la promotion et la protection des droits de l'homme

Experte indépendante sur la situation des droits de l'homme au Tchad (E/CN.4/2005/121, paragraphes 79 à 83)

79. L'État doit mettre en œuvre un système de gouvernement caractérisé par la transparence, la responsabilité, l'obligation de rendre compte de ses actes et la participation afin d'assurer la démocratie et la pleine réalisation des droits de l'homme. La décentralisation, prévue dans la Constitution, peut jouer un grand rôle pour la bonne gouvernance si elle permet aux gouvernements locaux de gérer leurs budgets avec autonomie et en même temps exige d'eux qu'ils rendent compte de leurs actes. Aussi, dans chaque division administrative, les fonctionnaires doivent être élus par le peuple au cours d'élections libres, périodiques et équitables.

80. La démocratie, le développement et le respect des droits de l'homme et des libertés fondamentales sont interdépendants et se renforcent mutuellement. La démocratie est fondée sur la volonté, librement exprimée, du peuple qui détermine le système politique, économique, social et culturel qui sera le sien et sur sa pleine participation à tous les aspects de la vie de la société.

81. La législation formellement en vigueur au Tchad doit devenir la règle effective. Le droit coutumier doit être conservé dès lors qu'il n'est pas incompatible avec les droits de l'homme définis par la législation et reconnus par les traités internationaux en vigueur au Tchad. Le gouvernement doit prendre en charge le contrôle de l'emploi de la force dans le pays et assurer à chaque personne sa dignité, sa liberté et sa sécurité.

82. Il faut procéder à l'édification d'un État de droit. Le secteur public tel qu'il existe, où il y a des remaniements tous les trois mois, est incapable d'administrer la chose publique. Il faut envisager un programme de réforme de l'administration nationale. Le respect de la volonté du peuple exprimée par des élections libres, périodiques et régulières doit conduire à consolider le pouvoir législatif en tant que représentant du peuple et gardien des droits de l'homme. Le Parlement doit adopter toutes règles juridiques nécessaires pour donner effet aux droits constitutionnels et aux droits de l'homme protégés par les traités en vigueur au Tchad.

83. La réforme du pouvoir judiciaire est indispensable. Tous les magistrats doivent être diplômés en droit. Le siège et le parquet doivent être deux branches séparées. Un service de conseil juridique gratuit doit être institué à différents niveaux, même par des étudiants en droit surveillés par un professeur tout comme par les associations professionnelles, tel le service fourni par l'Association de femmes juristes. Il faut prévoir un système de sélection des magistrats où les plus indépendants et impartiaux soient nommés. Un pouvoir judiciaire indépendant, impartial, établi par la loi et effectif met fin à l'impunité, garantit l'état de droit et les droits de l'homme. Il invite aux investissements pour le développement.

## **II. Non-discrimination et égalité devant la loi**

Experte indépendante sur la situation des droits de l'homme au Tchad (E/CN.4/2005/121, paragraphe 85)

85. L'intégration de la société tchadienne ne peut être retardée. Plusieurs acteurs doivent participer et trouver leur place dans la communauté nationale à construire. Au premier rang, ces 52 % de la population que représentent les femmes. Il s'agit d'incorporer l'équité de genre. Il faut absolument reconnaître aux femmes les rôles qu'elles jouent dans la vie quotidienne et leur donner la place qu'elles doivent avoir dans la société pour exercer cette citoyenneté qui leur manque aujourd'hui. Les femmes sont une force majeure dans la société. En les éduquant, la société progresse. Il faut encourager leur participation dans la vie politique. Il faut sensibiliser à tous les niveaux contre les pratiques qui discriminent les femmes. Il faut considérer les droits des femmes comme des droits de l'homme et organiser l'appareil de l'État pour une politique de prévention et, le cas échéant, pour considérer les violations comme des violations de droits de l'homme.

## **III. Le droit à la vie ; le droit à la liberté et à la sûreté personnelle ; le droit à l'intégrité physique et morale**

Experte indépendante sur la situation des droits de l'homme au Tchad (E/CN.4/2005/121, paragraphes 81, 84 et 89)

81. La législation formellement en vigueur au Tchad doit devenir la règle effective. Le droit coutumier doit être conservé dès lors qu'il n'est pas incompatible avec les droits de l'homme définis par la législation et reconnus par les traités internationaux en vigueur au Tchad. Le gouvernement doit prendre en charge le contrôle de l'emploi de la force dans le pays et assurer à chaque personne sa dignité, sa liberté et sa sécurité.

84. Le système pénitentiaire est vidé de sens s'il ne comporte pas un traitement des condamnés dont le but essentiel est leur amendement et leur reclassement social. Tous doivent y être traités avec humanité et respect de la dignité humaine. Le gouvernement doit garantir la qualité de la nourriture et la santé des détenus. Les formations pseudo-militaires à l'intérieur des prisons doivent être démantelées. Il faut apprendre aux détenus des activités génératrices de revenus. Il faut instituer des juges de suivi et d'application des peines; entre-temps, les juges criminels doivent prendre en charge cette tâche.

89. Les harcèlements doivent être épargnés à la société civile. Elle construit le tissu social et facilite les mouvements sociaux pour le développement. Elle joue aussi un rôle dans la politique de la bonne gouvernance, la lutte contre la corruption et l'impunité, le respect pour l'état de droit et la démocratie, la transparence. Le gouvernement doit envisager la formation des cadres vraiment qualifiés, engagés dans le destin du pays, prêts à prendre en main la construction du pays avec la société civile, qui puissent le conduire dans la voie du développement.

## **IV. Administration de la justice et état de droit**

Experte indépendante sur la situation des droits de l'homme au Tchad (E/CN.4/2005/121, paragraphes 82 à 84)

82. Il faut procéder à l'édification d'un État de droit. Le secteur public tel qu'il existe, où il y a des remaniements tous les trois mois, est incapable d'administrer la chose publique. Il faut envisager un programme de réforme de l'administration nationale. Le respect de la volonté du

peuple exprimée par des élections libres, périodiques et régulières doit conduire à consolider le pouvoir législatif en tant que représentant du peuple et gardien des droits de l'homme. Le Parlement doit adopter toutes règles juridiques nécessaires pour donner effet aux droits constitutionnels et aux droits de l'homme protégés par les traités en vigueur au Tchad.

83. La réforme du pouvoir judiciaire est indispensable. Tous les magistrats doivent être diplômés en droit. Le siège et le parquet doivent être deux branches séparées. Un service de conseil juridique gratuit doit être institué à différents niveaux, même par des étudiants en droit surveillés par un professeur tout comme par les associations professionnelles, tel le service fourni par l'Association de femmes juristes. Il faut prévoir un système de sélection des magistrats où les plus indépendants et impartiaux soient nommés. Un pouvoir judiciaire indépendant, impartial, établi par la loi et effectif met fin à l'impunité, garantit l'état de droit et les droits de l'homme. Il invite aux investissements pour le développement.

84. Le système pénitentiaire est vidé de sens s'il ne comporte pas un traitement des condamnés dont le but essentiel est leur amendement et leur reclassement social. Tous doivent y être traités avec humanité et respect de la dignité humaine. Le gouvernement doit garantir la qualité de la nourriture et la santé des détenus. Les formations pseudo-militaires à l'intérieur des prisons doivent être démantelées. Il faut apprendre aux détenus des activités génératrices de revenus. Il faut instituer des juges de suivi et d'application des peines; entre-temps, les juges criminels doivent prendre en charge cette tâche.

## **V. Libertés fondamentales**

Experte indépendante sur la situation des droits de l'homme au Tchad (E/CN.4/2005/121, paragraphes 79 et 80)

79. L'État doit mettre en œuvre un système de gouvernement caractérisé par la transparence, la responsabilité, l'obligation de rendre compte de ses actes et la participation afin d'assurer la démocratie et la pleine réalisation des droits de l'homme. La décentralisation, prévue dans la Constitution, peut jouer un grand rôle pour la bonne gouvernance si elle permet aux gouvernements locaux de gérer leurs budgets avec autonomie et en même temps exige d'eux qu'ils rendent compte de leurs actes. Aussi, dans chaque division administrative, les fonctionnaires doivent être élus par le peuple au cours d'élections libres, périodiques et équitables.

80. La démocratie, le développement et le respect des droits de l'homme et des libertés fondamentales sont interdépendants et se renforcent mutuellement. La démocratie est fondée sur la volonté, librement exprimée, du peuple qui détermine le système politique, économique, social et culturel qui sera le sien et sur sa pleine participation à tous les aspects de la vie de la société.

## **VI. Droits économiques et sociaux**

Experte indépendante sur la situation des droits de l'homme au Tchad (E/CN.4/2005/121, paragraphes 78 et 88)

78. Les Tchadiens et Tchadiennes ont un droit inaliénable au développement économique, social, culturel et politique. Leur gouvernement a la responsabilité première de créer des conditions favorables à la réalisation de ce droit. Il doit notamment s'acquitter de ses devoirs de protéger le peuple et lui assurer des conditions de vie dignes ainsi que d'éliminer les obstacles au développement.

88. Une campagne intensive d’alphabétisation est urgente au Tchad. Un peuple éduqué devient un bon gardien de ses droits. Il faut mettre en place un programme pour apprendre à lire et à écrire aux adultes du pays. Les organismes internationaux auront un rôle à jouer dans cette campagne si une volonté politique forte et un programme raisonnable sont visibles. Dans ce contexte, la liberté d’expression et d’information doit être respectée. Les médias publics et privés doivent être à même d’exercer leur métier sans ingérence des autorités. L’État doit les associer à sa campagne d’alphabétisation.

## **VII. Droits culturels**

n/a

## **VIII. Situation des groupes spécifiques**

Experte indépendante sur la situation des droits de l’homme au Tchad (E/CN.4/2005/121, paragraphes 85 et 86)

85. L’intégration de la société tchadienne ne peut être retardée. Plusieurs acteurs doivent participer et trouver leur place dans la communauté nationale à construire. Au premier rang, ces 52 % de la population que représentent les femmes. Il s’agit d’incorporer l’équité de genre. Il faut absolument reconnaître aux femmes les rôles qu’elles jouent dans la vie quotidienne et leur donner la place qu’elles doivent avoir dans la société pour exercer cette citoyenneté qui leur manque aujourd’hui. Les femmes sont une force majeure dans la société. En les éduquant, la société progresse. Il faut encourager leur participation dans la vie politique. Il faut sensibiliser à tous les niveaux contre les pratiques qui discriminent les femmes. Il faut considérer les droits des femmes comme des droits de l’homme et organiser l’appareil de l’État pour une politique de prévention et, le cas échéant, pour considérer les violations comme des violations de droits de l’homme.

86. Des initiatives doivent être prises pour assurer la protection des groupes les plus vulnérables. La pratique des enfants bouviers doit être abolie. L’engagement des jeunes filles comme domestiques doit faire l’objet d’une surveillance de la part des autorités.

## **IX. Droit au développement et coopération internationale**

Experte indépendante sur la situation des droits de l’homme au Tchad (E/CN.4/2005/121, paragraphes 78, 88 et 90)

78. Les Tchadiens et Tchadiennes ont un droit inaliénable au développement économique, social, culturel et politique. Leur gouvernement a la responsabilité première de créer des conditions favorables à la réalisation de ce droit. Il doit notamment s’acquitter de ses devoirs de protéger le peuple et lui assurer des conditions de vie dignes ainsi que d’éliminer les obstacles au développement.

88. Le gouvernement doit agir en vue de fournir un développement humain durable. Le Tchad a des opportunités importantes grâce à ses ressources naturelles ainsi qu’à l’Initiative en faveur des pays pauvres très endettés. Le boom pétrolier doit être capté au profit de la société. Le principal objectif de l’exploitation pétrolière doit être de trouver des politiques qui aient un impact maximal sur la réduction de la pauvreté. Il faut faire une évaluation des politiques de développement dans l’optique des droits de l’homme et de l’environnement.

90. Le gouvernement ne peut se soustraire à sa responsabilité pour tout ce qui n'a pas été fait depuis sa première installation. Il doit prendre ses responsabilités et gouverner le pays démocratiquement en vue du développement de la société. S'il s'attache à faire progresser la démocratisation et achemine des mesures économiques ayant en vue le bien-être de la population, il devrait recevoir l'appui de la communauté internationale. Il faut profiter de la présence des institutions des Nations Unies sur place pour démarrer la construction de la démocratie au Tchad, ce qui suppose bonne gouvernance, développement et respect des droits de l'homme.

**X. Commentaires reçus du Gouvernement**<sup>8</sup>

n/a

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<sup>8</sup> As published as official documents of the CHR.

## CHINA

### Introduction

During the period under review, the Working Group on arbitrary detention visited the country (please refer to document E/CN.4/2005/6/Add.4).

### I. Institutional and legal framework for the promotion and protection of human rights

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.4, paras. 68 and 74)

68. The Working Group expresses its deep satisfaction that the People's Republic of China signed the International Covenant on Civil and Political Rights and that preparation is being made for the ratification of the Covenant. The Working Group is confident that as a result, the requirements of international law pertaining to deprivation of liberty will be better reflected in the Chinese legal system.

74. None of the recommendations, which the Working Group formulated in its 1997 Report have been met; no definition to the term in criminal law "endangering national security" was given, no legislative measures have been taken to make a clear-cut exception from criminal responsibility for those who peacefully exercise their rights guaranteed in the Universal Declaration of Human Rights, and no real judicial control has been created over the procedure to commit someone to re-education through labour.

### II. Non-discrimination and equality before the law

n/a

### III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.4, paras. 71 to 73, 76, 77 and 79 (c) and (e))

71. The Working Group welcomes the information that the National People's Congress wishes to put on its agenda the reconsideration of the current legal framework for the system of re-education through labour. According to a responsible of the National People's Congress whom the Delegation of the Working Group met, the principal weak points of the current regulation are, on the one hand, the unduly long duration of this measure, which needs to be reduced; on the other hand the lack of an effective remedy against the decision of the authority.

72. The Working Group was informed that a provision is contemplated to be inserted in the criminal law legislation that clearly reflects the principle of the presumption of innocence. The Working Group welcomes this initiative which would constitute the implementation of its former recommendations.

73. The Working Group is especially satisfied to learn that certain improvements introduced in the places of detention previously visited by the Working Group are, in part, attributed to the recommendations it made in the course of its previous visit. The Working Group has actually noticed the huge amount of money allocated by the Government to improve the conditions of detention and the good practices introduced to better protect the rights of the detainees.

76. There exists no genuine right to challenge administrative detention including detention for the purpose of re-education through labour and psychiatric patients. The avenues to challenge the placement in RTL institutions are formal and do not satisfy the international law requirements.

77. As far as no law provides a clear definition of “State secrets”, the Working Group is concerned about the restriction on the right to defense imposed by regulations issued by public security departments, prison administration or prosecutors, when a case involves State security or State secrets.

79. In a spirit to assist China to improve the system of protection against arbitrary detention the Working Group makes the following recommendations:

- c) Noting with satisfaction that high level political decisions have been adopted to review the system of re-education through labour, the Working Group believes that the minimum requirements to comply with international standards would be that
- i) all acts giving rise to re-education through labour be clearly provided by law,
  - ii) the due process requirements – e.g the personal appearance before and hearing of the individual concerned by the competent body, the opportunity to put forward his arguments against being sent to a re-education through labour facility, the right to be represented by legal counsel, the right to appeal against unfavourable decision and the like - are provided by law and be scrupulously implemented in each case,
  - iii) if he so wishes, a genuine review of his case be effected by a court,
  - iv) the time of holding someone in RTL centres be considerably reduced.
  - v) the system of re-education through labour be never used to sanction the peaceful expression of one’s opinion or belief;
- e) Persons charged often invoke their freedom of opinion, expression, religion, belief, their freedom of association or assembly, or the right to take part in the conduct of public affairs of the country, as a legal basis exempting them from criminal accountability. The Working Group recommends that the question, to which of the conflicting interests shall be given priority, shall be decided after careful consideration of all the relevant circumstances, giving proper weight to the rights of the individuals. Definitions in criminal law legislation having such vague, imprecise or sweeping elements like ‘disrupting social order’, ‘endangering national security’, ‘attempting against the unity and integrity of the State’, ‘subverting public order’, ‘affecting national security’ and the like, shall not be used to punish the peaceful expression of the rights and freedoms, which the Declaration of Human Rights grants to everyone.

#### **IV. Administration of justice and the rule of law**

##### Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.4, paras. 70, 75, 78 and 79 (a))

70. The Working Group welcomes that in the spirit of those recent political and constitutional decisions, the following issues are being contemplated by the National People’s Congress as possible matters for new legislation or legislative amendments:

- The State governed by the Rule of Law requires that anyone’s arrest by the public security organs should in each case lie on more solid evidence than currently practised;
- Limitation of the length of detention and introducing alternative measures to detention, like Reinforcement of the defence lawyers’ participation in criminal proceedings including their immediate involvement after arrest;
- Compulsory recording of the questioning by the police of the suspected person in order to eliminate the occurrence of coercion by investigators;

- Inadmissibility of the evidence gathered under duress
- Right to silence of the person charged;
- More efficient methods to ensure the appearance and testimony of witnesses, through, *inter alia*, the reimbursement of travel expenses and financial lesser he might suffers.

75. Rules and practice concerning judicial deprivation of liberty is not in keeping with international law and standards. The holding in police custody of criminal suspects without judicial approval is too long, and the status of the public prosecutor, called to approve arrest pending investigation does not meet the requirements toward an officer authorised by law to exercise judicial power. In addition, since the Prosecutor is a party in the criminal proceedings, he lacks the requisite impartiality to take decisions in arrest matters.

78. The Working Group welcomes that the commitment of the People's Republic of China towards human rights is reflected in a newly adopted constitutional provision declaring the paramount importance China attaches to human rights protection. The Working Group believes that the best accomplishment of this commitment would be an early ratification of the International Covenant of Civil and Political Rights.

79. In a spirit to assist China to improve the system of protection against arbitrary detention the Working Group makes the following recommendations:

- a) Laws governing criminal detention should be reconsidered. Either the procuratorates empowered to take decision on arrest should be vested with the requisite independence, in order to meet the criteria of a judicial officer authorised by law to exercise judicial power, or the power to order or approve arrest should be shifted from the procuratorate to courts;

## **V. Fundamental freedoms**

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.4, para. 69)

69. The Working Group attaches primary importance to the decisions taken recently on political level to further reinforce and develop the protection of human rights in China. As a consequence of this decision the Constitution has been complemented by a provision granting constitutional rank to the protection of human rights and fundamental freedoms. Together with the constitutional provision already in force stipulating that the People's Republic of China is a State governed by the Rule of Law, this constitutional provision will, for sure, lay the foundation of a more effective legal framework to the protection of human rights in China.

## **VI. Economic and social rights**

n/a

## **VII. Cultural rights**

n/a



## **VIII. Situation of specific groups**

- **Deprivation of liberty of mentally unsound people**

Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.4, para. 79 (d))

79. In a spirit to assist China to improve the system of protection against arbitrary detention the Working Group makes the following recommendations:

d) Conditions of the admission against his will and forcible holding of people allegedly of unsound mind or for desintoxication shall be meticulously provided by law. Bearing in mind the vulnerable situation of mental health patients that law shall prescribe effective safeguards against arbitrariness. Courts shall be vested with competence to review, upon request, the legality, as well as the necessity to keep someone against his will in mental health institutions.

## **IX. The right to development and international cooperation**

n/a

## **X. Comments from the Government**<sup>9</sup>

n/a

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<sup>9</sup> As published as official documents of the CHR.

## COLOMBIA

### Introduction

During the period under review, the following special procedures visited Colombia:

- The Special Rapporteur on indigenous peoples (please refer to document E/CN.4/2005/88/Add.2).
- The Special Rapporteur on the right to freedom of opinion and expression (please refer to document E/CN.4/2005/64/Add.3).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, paras. 87, 88, 91 and 96).

87. The Special Rapporteur urges the Government and all parties involved in the conflict to restart the process of reconciliation and reconstruction of the country.

88. The Special Rapporteur urges the Government of Colombia to consider preparing and implementing a national plan on human rights which would include the most urgent priorities for the protection of all citizens' human rights and for the promotion of a human rights culture.

91. The Special Rapporteur urges the Government to draft specific bills and laws regarding anti-terrorist activities that are in conformity with the international humanitarian and human rights treaties ratified by Colombia. In this connection, the Special Rapporteur urges the Government to consider favourably the observations and recommendations on this matter contained in the reports of the Office of the High Commissioner for Human Rights in Colombia, especially those contained in the reports of 2003 and 2004 (E/CN.4/2003/13 and E/CN.4/2004/13).

96. The United Nations High Commissioner for Human Rights established an office in Colombia in 1997, at the invitation of the Government. Each year, this office produces a comprehensive report that includes balanced and focused recommendations, regarding the protection and promotion of human rights in the country. The Special Rapporteur strongly encourages the Government to analyse carefully the contents of those annual reports and to consider seriously adopting the recommendations included therein.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, paras. 90, 94 to 96 and 99)

Recommendations to the Government:

90. The State and the armed groups have an obligation to comply at all times with international humanitarian law and to respect human rights. It is suggested that a broad-based independent commission be established to ensure full compliance.

94. Regulatory legislation giving full and effective application to the constitutional provisions on the human rights of indigenous peoples should be passed as soon as possible.

95. Any draft legislation, draft constitutional reform or other initiative which introduces into the law provisions that violate indigenous peoples' rights or the principle of diversity should be withdrawn.

96. The other branches of government should fully respect the powers of the Constitutional Court, and refrain from limiting the scope of the *amparo* procedure, which is one of the principal mechanisms for the defence of indigenous peoples' human rights.

99. Programmes should be set up in conjunction with civil society organizations and human rights defenders active in indigenous affairs, as a means of joining forces to ensure the attainment of the Government's laudable aims in terms of the promotion and protection of the human rights of indigenous people.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, paras. 92 and 95).

92. The Special Rapporteur urges the Government to thwart the phenomenon of stigmatization, which represents per se a serious human rights violation and fuels the spiral of violence and resentment. The Government should take appropriate measures to prevent the use of stigmatization, especially on the part of its top officials, and the polarization of opinions, two elements that are poisoning the political debate and the exercise of pluralism.

95. The Special Rapporteur urges the Government to ensure that all ethnic groups have access to comprehensive and impartial information and have the possibility of expressing themselves freely regardless of their socio-economic status. As a part of the exercise of their right to freedom of opinion and expression, indigenous peoples and other ethnic groups should be able to participate in decision-making processes affecting their lives and their environment.

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, para. 93).

93. The Special Rapporteur urges the Government to release all individuals not involved in the commission of violent acts who have been detained because of their opinions and beliefs, or because they belong to an indigenous or other vulnerable group.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, paras. 91, 101 and 115)

91. Priority should be given to the indigenous peoples' demand that all the armed groups respect their neutral and demilitarized zones. Indigenous peace zones, free from all military operations and subject to international supervision, should be created as a matter of urgency.

101. Schemes for children and youngsters such as the network of informers, the introduction of peasant soldiers and the “soldiers for a day” programme should be discontinued.

115. Lastly, as a matter of particular urgency, international cooperation should be mobilized to prepare an emergency programme of aid to the indigenous communities in danger of extinction, particularly in the Amazon region. In this context, it is recommended that advice should be sought from the new United Nations focal point on the prevention of genocide.

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, paras. 89, 90 and 94).

89. The Special Rapporteur strongly recommends that the Government of Colombia re-establish the rule of law throughout its territory, to declare officially that all militias are illegal, to disband them and to prosecute human rights and humanitarian law violators regardless of their political affiliation. The Government should consider the fight against impunity as one of its main priorities and should make the programme for the protection of journalists, trade unionists, human rights defenders and teachers fully reliable. The Special Rapporteur invites foreign Governments and institutions, in cooperation with Colombian authorities, to contribute financially to the implementation of this programme, and to consider favourably requests for temporary or permanent asylum.

90. The Special Rapporteur wishes remind the Government of Colombia that fair trials for all suspected perpetrators of human rights violations, regardless of their political affiliation, will constitute a fundamental pillar of the process of reconciliation. Ultimately, only a fully independent judicial system can guarantee the impartial implementation of laws and rules. Investigations and trials should be conducted in accordance with international human rights standards. Likewise, suspects, defendants and convicted persons should be detained and treated according to international human rights and humanitarian standards.

94. The Special Rapporteur calls upon the Government to create a compensation fund for the victims of the conflict, regardless of their political affiliation or orientation. Cases of journalists and media workers should be considered with care and impartiality for compensation from this fund.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, paras. 102 to 105)

102. Prosecution services should investigate and apply the law in all complaints concerning abuses and violations committed against members of indigenous communities by members of the armed forces or the police.

103. The relevant State bodies should apply, with immediate effect and without exception, the precautionary measures established by the Inter-American Commission on Human Rights for various indigenous peoples.

104. The Anti-Terrorist Statute should under no circumstances be invoked against any indigenous people charged with an offence as a result of involvement in legitimate action to resist, oppose or protest against violations committed against them by any armed group.

105. No indigenous people should be detained by the armed forces unless a warrant for their arrest has been issued by a competent judicial authority. The duties of the military and the judiciary should be kept strictly separate, including in conflict zones.

## **V. Fundamental freedoms**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, paras. 93 and 95).

93. The Special Rapporteur urges the Government to release all individuals not involved in the commission of violent acts who have been detained because of their opinions and beliefs, or because they belong to an indigenous or other vulnerable group.

95. The Special Rapporteur urges the Government to ensure that all ethnic groups have access to comprehensive and impartial information and have the possibility of expressing themselves freely regardless of their socio-economic status. As a part of the exercise of their right to freedom of opinion and expression, indigenous peoples and other ethnic groups should be able to participate in decision-making processes affecting their lives and their environment.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, paras. 100)

100. Indigenous people should continue to be excluded from the bill on compulsory military service. Congress should not approve any law limiting or restricting the autonomy and freedoms of social and human rights NGOs.

## **VI. Economic and social rights**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, paras. 106 to 111)

106. Except where expressly requested by an indigenous community which has been fully apprised of the implications, no aerial spraying of illicit crops should take place near indigenous settlements or sources of provisions.

107. The State should promote and extend the coverage of alternative sustainable development projects, under development plans drawn up by the indigenous communities, and to that end should request the fullest possible international cooperation.

108. No investment or infrastructure projects, harvesting or mining of natural resources or new production projects should be encouraged without full and legitimate prior consultation and the involvement of the indigenous peoples. An agreed approach to the consultation process should be worked out.

109. As part of the plans for free education for all - which the State is under an obligation to provide - the bilingual and intercultural education programme should be reinforced in indigenous areas, and the role of private educational establishments should always be limited to supplementing the work of the State.

110. The Government's plans to provide health service coverage to the entire indigenous population should embrace and protect traditional medicine and its practitioners within the indigenous communities.

111. State entities working with indigenous populations should produce and make use of statistics disaggregated by ethnic group, so that they can focus their work more effectively. It is recommended that they should work out a suitable methodology in cooperation with academic and research institutions.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, paras. 94 and 95).

94. The Special Rapporteur calls upon the Government to create a compensation fund for the victims of the conflict, regardless of their political affiliation or orientation. Cases of journalists and media workers should be considered with care and impartiality for compensation from this fund.

95. The Special Rapporteur urges the Government to ensure that all ethnic groups have access to comprehensive and impartial information and have the possibility of expressing themselves freely regardless of their socio-economic status. As a part of the exercise of their right to freedom of opinion and expression, indigenous peoples and other ethnic groups should be able to participate in decision-making processes affecting their lives and their environment.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, paras. 92, 93, 97, 98 and 112)

92. The displaced indigenous population, and women and children in particular, should be accorded priority attention by the State and international organizations. Women, particularly mothers, should receive special assistance.

93. It is vital to secure food supplies for indigenous communities, and in particular for the displaced populations in conflict zones, and to ensure the free passage of food aid to the neediest groups.

97. The Special Rapporteur recommends the establishment of an effective mechanism for the protection and promotion of the rights of Colombia's indigenous women, with the aim of

forestalling violations of their fundamental rights and promoting their active involvement in decisions affecting their lives and their active development within their communities.

98. Existing programmes on the provision of basic social services should be extended so as to improve the situation of indigenous women and children in rural areas, and in particular displaced women and children, with regard to health and education.

112. The armed groups should refrain from recruiting minors, and those already recruited should be returned to their families immediately and given appropriate care by specialist State institutions.

### **IX. The right to development and international cooperation**

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88/Add.2, para. 114)

114. The Special Rapporteur recommends that the United Nations and the international community at large continue to provide cooperation for the construction of a peaceful, just society. He appeals in particular for special attention to continue to be paid to the situation of Colombia's indigenous peoples, applying a strong gender perspective, and for an approach aimed at ensuring respect for indigenous human rights when devising policies and initiatives for the various agencies in the country.

### **X. Comments from the Government**<sup>10</sup>

n/a

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<sup>10</sup> As published as official documents of the CHR.

## CÔTE D'IVOIRE

### Introduction

During the period under review, the following special procedures visited Côte d'Ivoire:

- The Special Rapporteur on contemporary forms of racism (please refer to document E/CN.4/2005/18/Add.3).
- The Special Rapporteur on the right to freedom of opinion and expression (please refer to document E/CN.4/2005/64/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.2, paras. 64, 67, 68, 72 and 73).

64. The Special Rapporteur strongly urges the Government of Reconciliation to abide by the decisions included in the Linas-Marcoussis Agreement regarding the immediate establishment of a national human rights commission, the request for the creation of international commission of inquiry and subsequent actions to be implemented in order to end impunity, provide compensation and rehabilitation to victims of human rights violations. Trials and detention of the suspects, defendants and convicted must be implemented according to international human rights and humanitarian standards.

67. The Special Rapporteur urges the Government to draft specific bills and laws regarding hatred and hateful propaganda in the framework of the exercise of freedom of opinion and expression, in light of the provisions contained in articles 10 and 13 of the Constitution.

68. The Special Rapporteur urges the Government to reformulate, following the commitment taken in the Linas-Marcoussis Agreement, article 35 of the Constitution on the eligibility of the President of the Republic, in conformity with the international treaties ratified by Côte d'Ivoire and articles 10 and 13 of the Constitution.

72. The Special Rapporteur endorses the recommendation made, inter alia, in the High Commissioner's report to the Security Council (S/2003/90), that the Government give urgent consideration to the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

73. The Special Rapporteur invites the Government to submit outstanding reports to relevant treaty bodies as soon as possible.

Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3; paras. 55, 57 to 61, 65 and 66)

55. In view of the extent of the split in the inter-ethnic fabric, the ethnic isolationism it is generating and its central role in the political crisis in Côte d'Ivoire, the Special Rapporteur recommends that the authorities at the highest level broadcast a clear message reaffirming the values of tolerance, coexistence and interaction in the collective effort to build a multi-ethnic, multicultural and multireligious society in Côte d'Ivoire, and the central role of this inter-ethnic dynamic in the building of the country's plural identity and prosperity; and acknowledging the



threat of a division along ethnic lines posed by the dynamic of xenophobia set in motion by the current political crisis. Such a message should also convey the authorities' determination to combat this dynamic in all its forms, beginning with the systematic punishment of all acts of proven xenophobic violence and the urgent rebuilding of inter-ethnic relations. A joint declaration along these lines should be made by the leaders of the main political parties and forces in the governing coalition.

57. A democratically and ethnically balanced independent commission should be set up to promote and strengthen inter-community relations, with the power and means to promote and strengthen inter-community relations. It should be established by Parliament and have the legal authority and the budgetary resources to enable it to intervene in the operation of the principal State administrations. It should report to Parliament, submitting recommendations, on an annual basis.

58. Given the media's ability to profoundly influence perceptions, images and behaviours in inter-ethnic and inter-community relations, and thus to strengthen or undermine those relations, as the Ivorian crisis has shown, it is recommended that the media should establish its own body to promote inter-ethnic dialogue.

59. A strategy for inter-community dialogue should be worked out on the basis of a close analysis of the lines and characteristics of the inter-ethnic split, and through an inter-community process at all levels of society. A permanent national mechanism for interreligious dialogue should also be set up, with local branches, politically independent and with adequate resources provided by Parliament.

60. An effort of memory is also an essential component of the national catharsis, partly in order to establish the historical truth concerning acts of xenophobic violence and partly to ensure that the record is not written by outsiders. It will be for the main political actors to determine, in a democratic manner and in the context of a political resolution of the crisis, the nature of the exercise and the methods and structure to be adopted, along the lines of South Africa's Truth and Reconciliation Commission.

61. The need to rebuild community coexistence should be the guiding principle in reviewing the political issues at the heart of the crisis, such as rural land tenure, nationality and eligibility for high office, and in finding lasting solutions

65. Arrangements to establish a national human rights commission, as provided for in the Linas-Marcoussis Agreement, should be speeded up.

66. Côte d'Ivoire should give a high priority to ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.2, para. 69).

69. The Special Rapporteur endorses the concerns and the recommendations of the Committee on the Elimination of Racial Discrimination (CERD/C/62/CO/1 of 3 June 2003) and

takes note of the contents of paragraph 16 concerning the role of national media in encouraging hatred and xenophobia.

Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3, paras. 56, 62 and 63)

56. Any lasting political solution to the crisis facing Côte d'Ivoire should be accompanied by a democratically-prepared programme to repair the inter-ethnic weave of society. This programme should be a long-term project, prepared in consultation with all the actors of Ivorian society, and should be the linchpin of the process of rebuilding an egalitarian, democratic and interactive multiculturalism. It should take stock of and recognize the experience gained through tradition, in particular the cultural values, practices and mechanisms developed by Côte d'Ivoire's various communities as they have learned to live together. In this context, it is essential to encourage the various communities, through education and information, to learn about each other and about the depths of their interaction both in terms of history, traditions and values and in terms of the role it has played in building the Ivorian nation. The inter-ethnic dimension should above all be made the cornerstone of a radical education reform. School curricula should be revised in the light of the challenges thrown up by the crisis, with an emphasis on intercultural and human rights education. Civil servants and law-enforcement officials should receive human rights training with an emphasis on intercultural values, respect for diversity and pluralism, and respect for and protection of minorities.

62. The key components and structures of the apparatus of State should reflect the multi-ethnic and multicultural nature of Ivorian society. A positive discrimination plan should be worked out in a democratic manner and incorporated into the programme to rebuild multiculturalism in Côte d'Ivoire.

63. The regional dimension, which has loomed large in the history of inter-ethnic relations in Côte d'Ivoire, as well as in the evolution of the current political crisis, must also be taken into account when seeking a lasting reconstruction of the inter-ethnic fabric of Ivorian society. All countries of the region, under the aegis of the Economic Community of West African States, should work together to discuss and prepare a joint programme to promote intercultural dialogue and cultural pluralism within the region and to reinforce multiculturalism. The aim should be to ensure that population movements, cross-border family relationships and cultural and ethnic ties cease to be open to manipulation for political ends or the basis of identity polarization, and instead become key elements of economic integration and cultural development, for example through the promotion of intercultural tourism that highlights the prodigious artistic vitality of the peoples of the region and the richness of their common heritage, both tangible and intangible.

**III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.2, paras. 63 and 65).

63. The Special Rapporteur urges the Government of Reconciliation to stick to the Linas-Marcoussis Agreement, to conclude the disarmament process and to begin a real process of reconciliation and reconstruction of the country. The Government should not hesitate to ask for assistance from the relevant United Nations agencies and other institutions.

65. The Special Rapporteur urges the Government to release all individuals not involved in the implementation of violent actions, who are detained because of their opinions and beliefs, or because of their belonging to an ethnic group.

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.2, paras. 62 and 66).

62. The Special Rapporteur urges the Government of Reconciliation to consider the fight against impunity as one of the main priorities ahead. The Special Rapporteur strongly recommends to the Government to re-establish republican legality in full, to declare officially that all militias are illegal, to disband them and to pursue human rights violators in the courts, regardless to their ethnic and/or political affiliation.

66. The Special Rapporteur calls the Government to create a compensation fund for the victims of the conflict, regardless of their political affiliation. Within this initiative, cases concerning journalists and media workers should be considered with care and impartiality. The Special Rapporteur warmly encourages the Government of Reconciliation to seek assistance from relevant United Nations agencies and other international juridical institutions for the correct and effective implementation of the above recommendation.

Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3 para. 64)

64. In order to root out the culture of impunity that has sprung up as a result of the crisis and to reassert the rule of law, the Government and the Forces Nouvelles, in the areas under their control, should give a high priority to the prosecution and trial of those responsible for acts of xenophobic violence and violations of human rights and humanitarian law.

#### **V. Fundamental freedoms**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64/Add.2, paras. 71 and 72).

70. The Special Rapporteur encourages the United Nations, especially the United Nations Educational, Scientific and Cultural Organization and other relevant international organizations, to continue their efforts for the development of independent media in Côte d'Ivoire, bearing in mind the experience of other African countries and the expertise of African journalists. International and regional organizations may think about the establishment of a journalism school. Professional training and financial investments, especially an increase in salaries, may upgrade the moral stance of the press and the media industry. Replacement of radio and television installations destroyed during the conflict is another major priority.

71. The Special Rapporteur believes that all parties should commit themselves to a national, independent and inclusive media commission, and urges the Government to adopt the draft bill on the press - the so-called Press Code - as soon as possible. He also recommends that the

Government and civil society make joint efforts to reactivate and reinforce the work of media institutions and professional associations such as the “Observatoire pour la liberté de la presse, de l’éthique et de la déontologie” (OLPED), the “Union nationale des journalistes de Côte d’Ivoire”, the “Conseil national de la communication audiovisuelle” and the “Commission nationale de la presse”.

#### **VI. Economic and social rights**

n/a

#### **VII. Cultural rights**

n/a

#### **VIII. Situation of specific groups**

Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3, para. 67)

67. In its next reports to the human rights treaty-monitoring bodies, in particular the Committee on the Elimination of Racial Discrimination, Côte d’Ivoire should give prominence to the question of the threat of xenophobia and to the state of inter-ethnic relations following the deterioration observed during the current crisis.

#### **IX. The right to development and international cooperation**

n/a

#### **X. Comments from the Government**<sup>11</sup>

n/a

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<sup>11</sup> As published as official documents of the CHR.

## CUBA

### Introduction

The Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba is submitting to the Commission on Human Rights her report E/CN.4/2005/33.

### I. Institutional and legal framework for the promotion and protection of human rights

Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba (E/CN.4/2005/33, para. 36)

(c) Review laws which lead to criminal prosecutions of persons exercising their freedom of expression, demonstration, assembly and association, and in particular Act No. 88 and article 91 of the Criminal Code, in order to bring these provisions of the law into line with the above-mentioned provisions of the Universal Declaration of Human Rights;

(e) Reform the rules of criminal procedure to bring them into line with the requirements of articles 10 and 11 of the Universal Declaration of Human Rights;

(f) Establish a standing independent body with the function of receiving complaints from persons claiming that their fundamental rights have been violated;

(j) Accede to the International Covenant on Civil and Political Rights and its optional protocols and the International Covenant on Economic, Social and Cultural Rights.

### II. Non-discrimination and equality before the law

n/a

### III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba (E/CN.4/2005/33, para. 36)

(a) Halt the prosecution of citizens who are exercising the rights guaranteed under articles 18, 19, 20, 21 and 22 of the Universal Declaration of Human Rights;

(b) Release detained persons who have not committed acts of violence against individuals and property;

(d) Uphold, without exceptions, the moratorium on the application of the death penalty introduced in 2000, with a view to the abolition of the death penalty;

### IV. Administration of justice and the rule of law

n/a

## **V. Fundamental freedoms**

Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba (E/CN.4/2005/33, 36)

- (g) Review the regulations relating to travel into and out of Cuba in order to guarantee freedom of movement as defined in article 13 of the Universal Declaration of Human Rights;
- (h) Authorize non-governmental organizations to enter Cuba;
- (i) Foster pluralism in respect of associations, trade unions, organs of the press and political parties in Cuba;

## **VI. Economic and social rights**

n/a

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

n/a

## **IX. The right to development and international cooperation**

n/a

## **X. Comments from the Government**<sup>12</sup>

In a letter dated 11 February 2003, from the Minister for Foreign Affairs of the Republic of Cuba addressed to the United Nations High Commissioner for Human Rights (E/CN.4/2003/G/37) it was stated that “The Government and people of the Republic of Cuba therefore firmly reject any mandate or activity contemplated in a resolution vitiated the outset, and will thus not cooperate to the slightest degree in the implementation of the Commission resolution 2002/18.”

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<sup>12</sup> As published as official documents of the CHR.

## DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

### Introduction

The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK) is submitting to the Commission on Human Rights his report E/CN.4/2005/34.

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2005/34, para. 68).

68. (a) DPRK should abide by international human rights standards, including the four human rights treaties to which it is a party, follow-up the recommendations from the monitoring committees set up by these treaties, and accede to and implement other relevant treaties;
68. (b) DPRK should reforms laws and practices which are inconsistent with those standards;
68. (c) DPRK should uphold human rights together with democracy, peace, sustainable development and demilitarization, with greater space for civil society participation at all levels of decision-making and implementation;
68. (d) DPRK should respect the Rule of Law, particularly the promotion of an independent and transparent judiciary, safeguards for the accused/detainees, access to justice and civil society participation, and checks-and-balances against abuse of power, e.g. through the establishment of a national human rights commission or equivalent, genuine non-governmental organizations, and active and independent media;
68. (e) DPRK should reform the administration of justice, particularly to improve the prison system, abolish capital and corporal punishment, and forced labour, and end preventive or administrative detention as well as the detention of political prisoners;
68. (g) DPRK should provide redress through expeditious and effective processes in the case of transgressions, such as in relation to the abductions of foreign nationals;
68. (h) DPRK should capacity-build law enforcers and the public to protect human rights through pro-active programmes of human rights education with gender-and-child sensibility and critical analysis;
68. (i) DPRK should issue a clear directive, perhaps in the form of a national human rights action plan prepared with broad public participation, to law enforcers and other power bases to respect human rights;
68. (k) DPRK should invite the Special Rapporteur and other mechanisms, as appropriate, to visit the DPRK to take stock of the human rights situation and recommend reforms;
68. (l) DPRK should seek technical assistance from the Office of the UN High Commissioner for Human Rights and other agencies, as appropriate, to support activities to promote and protect human rights.

## **II. Non-discrimination and equality before the law**

n/a

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2005/34, para. 69).

69. (c) Other members of the international community should promote orderly and safe channels of migration with the country of origin to reduce clandestine channels and promote inter-country cooperation to counter human smuggling and trafficking, while treating the victims humanely;

69. (d) Other members of the international community should provide space for long-term solutions to help refugees, including local settlement in the first asylum country, resettlement in third countries, and safe and voluntary repatriation with adequate follow-up, and strengthen international solidarity in sharing the responsibility to care for refugees and migrants;

## **IV. Administration of justice and the rule of law**

n/a

## **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2005/34, 68 and 69).

68. (j) DPRK should ensure that humanitarian assistance, including food aid, reaches the target groups, with unimpeded access and transparent monitoring and accountability;

69. (e) Other members of the international community should ensure that aid and assistance reach vulnerable groups with transparent monitoring and accountability, supported by unimpeded access by humanitarian organizations.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2005/34, paras 68 and 69).

68. (f) DPRK should address the root causes of displacement, prevent persecution and victimisation of those who are displaced, including when they return to the country of origin, treat those who are displaced, smuggled and/or trafficked humanely, and foster social re-integration of returnees;



69. (1) Other members of the international community should uphold the protection of refugees and other persons displaced from the DPRK, including the principle of non-refoulement and the grant of at least temporary refuge/protection, and end bilateral and other arrangements which jeopardize the lives of those who seek asylum;

## **IX. The right to development and international cooperation**

n/a

## **X. Comments from the Government**<sup>13</sup>

### Observations of the Government of the Democratic People's Republic of Korea (E/CN.4/2005/G/13)

Position of the Democratic People's Republic of Korea (DPRK) regarding the technical cooperation for DPRK in the area of human rights, as contained in document E/CN.4/2005/32.

The technical cooperation as mentioned above has been referred to in Commission resolution 2004/13. The DPRK has already repeatedly stated its resolute rejection of the resolution and still remains invariable in its position. The resolution, as initiated by the European Union, is based on political motivations, taking sides with the United States policy of hostility against the DPRK and, therefore, has nothing to do with genuine promotion and protection of human rights. The resolution is also in pursuit of confrontation and double standards in flagrant violation of internationally recognized principles including universal, non-selective and objective handling of human rights issues through dialogue and cooperation. Consequently, the resolution in its entirety represents one of the major factors contributing to the serious undermining of the credibility of the Commission on Human Rights in whose activities the principle of non-politicization, objectivity and impartiality should be thoroughly observed.

The DPRK rejects and does not even recognize the resolution itself since it runs counter to the genuine promotion and protection of human rights in actual fact. As for the technical cooperation for DPRK in the area of human rights, the DPRK attaches importance to such cooperation and is always prepared to make every effort for its realization.

However, under current circumstances in which the technical cooperation is being abused as a means of pressure to enforce the implementation of the resolution, the DPRK has been left with no option but to disagree to it.

The initiators of the resolution have driven DPRK into such circumstances. For this reason, the technical cooperation for DPRK in the area of human rights would be inconceivable unless [this] fundamental obstacle to its realization is removed once and for all. In the absence of any resolution against DPRK, the technical cooperation in the area of human rights would be realized spontaneously. Reiterating the DPRK's rejection of the resolution, I wish to reaffirm our commitment to the noble work of putting an end to the politicization of human rights and realizing genuine technical cooperation in the area of human rights in an environment free from confrontation and coerciveness.

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<sup>13</sup> As published as official documents of the CHR.

## DEMOCRATIC REPUBLIC OF THE CONGO

### Introduction

Au cours de la période concernée, l'expert indépendant sur la situation des droits de l'homme en République Démocratique du Congo (RDC) a visité deux fois le pays (veuillez vous référer au document E/CN.4/2005/120).

### I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, para. 25 et chapitre VI (o) (p) (q)).

25. L'Expert indépendant recommande au Gouvernement de s'engager dans la voie de l'adhésion aux textes conventionnels auxquels la République démocratique du Congo n'est toujours pas partie. Il lui demande de respecter ses obligations en matière de rapports aux organes des traités auxquels la République démocratique du Congo est partie, notamment par le renforcement du Comité interministériel. Enfin, il demande que le Ministère des droits humains soit doté des moyens nécessaires pour l'accomplissement de sa mission, sans lesquels il ne pourrait répondre des aspirations du peuple.

[L'Expert indépendant recommande et demande] à la Communauté Internationale, notamment aux Nations Unies, au Conseil de Sécurité, à l'Union Africaine, à l'Union Européenne, et à tous les Etats :

- (o) de placer la protection des populations et le respect des droits humains au centre de la prochaine résolution du Conseil de Sécurité de l'ONU. Le mandat de la MONUC doit être renforcé et étendu afin de garantir, sur l'ensemble du territoire, la protection de la population civile, le désarmement des groupes armés, le rapatriement des groupes et milices étrangers, l'arrestations des responsables de crimes contre l'humanité. A titre de comparaison , la République Démocratique du Congo est 214 fois plus grande que le Kosovo ; compte au moins 25 fois plus d'habitants, le péage en vies humaines qu'elle a payé est près de 400 fois supérieur ; cependant, si l'on compare les dimensions de la force militaire et policière autorisée dans le cadre de la mission OTAN/KFOR à son plus haut niveau et celle actuelle de la MONUC (qui est à son plus haut niveau), on constate qu' au moins trois fois plus de militaires et de CIVPOL ont été accordés à la cause de la paix au Kosovo qu'à celle de la paix en RDC. Sur la base de ces chiffres, l'Expert Indépendant estime que le Conseil de Sécurité se doit de porter la force militaire de la MONUC à au moins 80000 hommes pendant toute la transition ainsi que pour une période postérieure aux élections, avec l'objectif de travailler en coopération avec les autorités civiles et militaires congolaises pour la normalisation définitive du pays. L'exemple de l'opération de l'UE Artémis en Ituri a été probant. Il est souhaitable de le répéter dans le cadre onusien. La force militaire de la MONUC devra être renforcée afin de pouvoir protéger efficacement les populations civiles (notamment les femmes et les enfants). Des mécanismes stricts de discipline devront être mis en place afin d'éviter de nouveaux abus et dérives, et notamment des abus sexuels ;
- (p) de renforcer notablement les mandats, les ressources matérielles et humaines des Sections des droits de l'homme et de protection de l'enfance, afin d'être à la mesure des nécessités de ce pays immense ;

- (q) de donner les moyens à Madame la Haute Commissaire aux droits de l'homme de mettre la République démocratique du Congo au plus haut des priorités de son Bureau, afin de contribuer à faire cesser la violence armée, source de violations des droits humains innombrables, et de se faire la porte-parole, du haut de son autorité morale, des victimes de toutes les violences, dont les violences sexuelles, auprès de l'opinion publique internationale et des preneurs de décisions internationaux. Les ressources du BHCDH devront être substantiellement renforcées à cet effet. L'Expert indépendant note par ailleurs que les ressources à sa propre disposition pour l'accomplissement du mandat (notamment les ressources humaines et financières) sont, malgré les efforts déployés, encore insuffisantes. En raison de la gravité, de la complexité de la situation, du volume de travail nécessaire pour en faire le suivi, demande donc au Haut Commissaire de créer une task-force de fonctionnaires destinée à suivre la République démocratique du Congo depuis le siège genevois, et de coopérer avec l'Expert indépendant dans l'accomplissement de sa mission. Il demande aux bailleurs de fonds de financer conséquemment cet effort ;

## **II. Non-discrimination et égalité devant la loi**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, chapitre VI (e) (i)).

L'Expert indépendant recommande et demande au Gouvernement de la transition, aux parties congolaises et étrangères impliquées dans le conflit :

- (e) de s'engager dans la voie d'un dialogue politique tendant à la consolidation de la nation congolaise, pour la construction d'un avenir radieux, commun pour tous les congolais sans aucune discrimination, notamment fondée sur le sexe, l'âge, l'appartenance ethnique ou politique, l'opinion ou la croyance ;
- (i) de lancer immédiatement une campagne nationale de promotion des droits humains, de diffusion d'une culture de tolérance, de paix, et de responsabilité, afin de poser dans tous les esprits, les fondations de la maison commune à construire ensemble dans un esprit de fraternité et de tolérance.

## **III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne; le droit à l'intégrité physique et morale**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, chapitre VI (a) à (e)).

L'Expert indépendant recommande et demande au Gouvernement de la transition, aux parties congolaises et étrangères impliquées dans le conflit :

- (a) de mettre sans délai un terme à la violence, d'en arrêter les auteurs, de les confier à la justice congolaise et à la justice internationale ;
- (b) d'écarter du Gouvernement, des institutions et des FARDC, tous les auteurs avérés de crimes contre l'humanité et graves violations des droits humains, à quelque niveau hiérarchique qu'ils se trouvent ;
- (c) d'œuvrer pour la formation des FARDC (y incluse celle portant sur le droit international humanitaire et les droits humains), leur encadrement, et discipline ; de les équiper pour faire cesser la violence, en poussant les milices étrangères au rapatriement, en favorisant le retour des réfugiés congolais sans distinction d'ethnie, en établissant leur contrôle sur toutes les frontières du pays, en mettant terme à

- l'existence de zones de non-droit où les êtres humains sont des esclaves au service des pilliers des ressources naturelles du pays, des trafiquants d'armes, des bandits de tout acabit ;
- (d) de confier progressivement la gestion de la sécurité à une Police Nationale formée, équipée, disciplinée, et responsable ;
  - (e) de s'engager dans la voie d'un dialogue politique tendant à la consolidation de la nation congolaise, pour la construction d'un avenir radieux, commun pour tous les congolais sans aucune discrimination, et notamment fondée sur le sexe, l'âge, l'appartenance ethnique ou politique, l'opinion ou la croyance ;

#### **IV. Administration de la justice et l'état de droit**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, chapitre VI).

L'Expert indépendant recommande et demande au Gouvernement de la transition, aux parties congolaises et étrangères impliquées dans le conflit :

- (j) d'accentuer les efforts dans le domaine de la lutte contre l'impunité, de consacrer de manière pleine et entière dans les lois l'indépendance et les pouvoirs de la justice dans le respect de la séparation des pouvoirs, de fournir toutes les ressources nécessaires au système judiciaire pour enquêter et juger les infractions et les crimes commis par toutes les parties et tous les auteurs ;
- (k) de créer un Fond d'indemnisation pour les victimes des crimes contre l'humanité, financé notamment par le biais de l'exploitation légale des ressources naturelles du pays, et avec le concours de la Communauté Internationale. Les biens mal acquis, y inclus par le trafic des ressources naturelles, doivent être saisis partout où ils se trouvent et doivent servir à financer le Fonds et à la reconstruction du pays ;
- (l) d'adopter sans délai toutes les mesures nécessaires pour le bon fonctionnement sans entraves de la CPI, d'initier et soutenir toutes démarches auprès de l'ONU pour que soit créé un Tribunal Pénal International pour le Congo, ayant pour but de connaître et poursuivre tous les auteurs de crimes contre l'humanité et graves violations des droits humains et du droit international humanitaire.

[L'Expert indépendant recommande et demande] à la Communauté Internationale, notamment aux Nations Unies, au Conseil de Sécurité, à l'Union Africaine, à l'Union Européenne, et à tous les Etats :

- (r) d'instituer (par décision du Conseil de Sécurité) un Tribunal pénal international compétent pour connaître des crimes commis au cours des conflits successifs en République démocratique du Congo ;

#### **V. Libertés fondamentales**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, chapitre VI (f)).

L'Expert indépendant recommande et demande au Gouvernement de la transition, aux parties congolaises et étrangères impliquées dans le conflit :

- (f) de travailler et prouver au monde entier que les congolais sont d'honneur à respecter les engagements et en particulier ceux de l'Accord Global et Inclusif, que des élections libres auront bien lieu en juin 2005 et que le pays est irrévocablement engagé dans le chemin de la paix, de la concorde, de la démocratie et du développement ;

## **VI. Droits économiques et sociaux**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, chapitre VI (g)).

L'Expert indépendant recommande au Gouvernement de la transition, aux parties congolaises et étrangères impliquées dans le conflit :

- (g) de pratiquer la bonne gouvernance, la bonne gestion des ressources du pays, de lutter contre la corruption à tous les niveaux ;

## **VII. Drois culturels**

n/a

## **VIII. Situation des groupes spécifiques**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, paras. 74 et 75 et chapitre VI (h)).

74. L'Expert indépendant souligne le devoir par l'Etat congolais et la Communauté Internationale d'œuvrer promptement et efficacement dans le sens de fournir l'assistance médicale, psychologique et sociale aux femmes violées, ainsi qu'à leurs enfants et leurs familles, de garantir leur protection physique ainsi que l'assistance judiciaire visant la reconnaissance de leurs droits. Il appelle la Communauté Internationale à fournir sans ultérieur délai tout l'appui financier nécessaire pour soutenir l' « Initiative conjointe contre les violences sexuelles en RDC », et le Gouvernement, à prêter son concours matériel et financier à l'initiative ; appelle une intervention à la hauteur des nécessités tendant à remettre en état de fonctionnement, le système de santé du pays en termes financiers et de renforcement des capacités.

75. En même temps, il recommande au Gouvernement congolais de procéder à la revalorisation de la femme (entendue comme étant l'égal de l'homme) dans la loi, dans la société, dans la répartition des responsabilités au sein de l'Etat, dans les mentalités et la culture du peuple, notamment par une forte action éducative, par les médias, l'école, la formation professionnelle.

L'Expert indépendant recommande au Gouvernement de la transition, aux parties congolaises et étrangères impliquées dans le conflit :

- (h) de fonder le développement du pays sur l'objectif prioritaire de la revalorisation de la femme, de son épanouissement en tant que citoyenne à part entière dans tous les domaines, (politique, social, économique, culturel, familial). La maltraitance, les crimes contre les femmes et les enfants doivent cesser ; et toutes les victimes doivent recevoir l'assistance dont elles ont besoin pour se relever.

## **IX. Le droit au développement et la coopération internationale**

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2005/120, chapitre VI (m) (n)).

[L'Expert indépendant recommande et demande] à la Communauté Internationale, notamment aux Nations Unies, au Conseil de Sécurité, à l'Union Africaine, à l'Union Européenne, et à tous les Etats :

- (m) d'apporter son soutien, son assistance (politique, financière, militaire, diplomatique) au processus de transition, de reconstruction, de pacification du pays et à l'affirmation de tous les attributs de la souveraineté de la République démocratique du Congo ;
- (n) de coopérer avec l'Etat congolais afin de mettre un terme immédiat et définitif à l'exploitation illicite des ressources naturelles, au trafic d'armes, de refuser que ces ressources soient illégalement pillées, de saisir les biens des responsables de ces trafics où qu'ils se trouvent ,au profit du pays

**X. Commentaires du Gouvernement**<sup>14</sup>

n/a

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<sup>14</sup> As published as official documents of the CHR.

## EL SALVADOR

### Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited the country (please refer to document E/CN.4/2005/72/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2005/72/Add.2, paras. 82 to 84).

82. First, I recommend that the Government of El Salvador:
- (a) Create an information and knowledge base:
    - Support research on the links between family structure, paternity, child development and domestic violence and their implications for violent behaviour, including gang activity;
    - Enhance collection and analysis of sex-disaggregated statistics in all sectors particularly related to labour, health and the criminal justice system;
    - Develop a systematic method of recording and disseminating data on all forms of violence against women at all stages - from complaint to closure;
  - (b) Ensure protection by legislative, investigative and judicial reforms:
    - Ratify the CEDAW Optional Protocol; bring legislation in line with CEDAW and ICCPR regarding the protection of life and access to health care;
    - Amend article 32 of the Code of Criminal Procedure;
    - Remove all obstacles to the effective implementation of the law for the protection of women's rights and their access to justice and install effective investigation and monitoring mechanisms;
    - Investigate all instances of alleged violence against women whether it occurs in the home, in the community, or workplace; prosecute perpetrators; and grant adequate compensation and support to survivors or victims' families;
    - Adopt necessary laws to provide protection to victims of trafficking in accordance with international human rights standards including the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), and prosecute the users and abusers of trafficked persons;
  - (c) Strengthen institutional infrastructures:
    - Support the Office of the Procurator and provide it with full institutional backing, as well as the needed resources, so as to ensure its independence and operations; take additional steps to guarantee the security of all members of the Office in the performance of their functions;
    - Provide sufficient shelters/safe houses and counselling for women survivors of violence;

- Strengthen ISDEMU’s capacity towards adopting a holistic strategy of work; to promote and monitor the national action plans for women in all ministries; and to outreach to civil society to better represent the priorities of diverse women’s groups in the country;
  - Provide ISDEMU with adequate budgetary allocations to enable its participation in relevant international and regional events, particularly the annual meetings of the Commission on the Status of Women, as well as to support the participation of a wide range of women’s NGOs in its activities;
- (d) Initiate training and awareness-raising programmes:
- Support training of the justice sector and the police on new legislation for the protection of women’s rights, investigative techniques and sensitivity to needs of survivors of violence and their families;
  - Conduct legal literacy campaigns to inform women of their rights and places to go to submit complaints;
  - Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for recruitment of women, and assistance with health care;
  - Conduct awareness-raising campaigns to generate zero tolerance for violence against women and behavioural change promoting non-violent masculine values;
  - Integrate gender equality and human rights norms into school curricula and books that focus on equality in parenthood with particular emphasis on responsible fatherhood;
- (e) Enforce and monitor international labour standards:
- Ensure that the Ministry of Labour exercises due diligence to violence and violations of labour standards in workplaces, particularly in the *maquilas* and private homes where girls and women work without any protection;
  - Monitor the labour standards in the *maquilas*, investigate complaints and bring perpetrators to justice; and
  - Include domestic work in the ILO/IPEC “worst forms of child labour” definition and take measures towards its elimination.
83. Further, I recommend that the international community:
- Expand the OHCHR mandate from technical cooperation to human rights protection and monitoring so that cases can be followed through the criminal justice system;
  - Provide, through bilateral and multilateral funding, sufficient resources to strengthen the OHCHR capacity to support the Government’s initiatives for effective implementation of international, regional and domestic law for the protection of women’s rights with the aim of eliminating impunity for acts of violence against women, which would include training for judges and magistrates in international



human rights instruments, introducing mechanisms for applying these principles in the domestic judicial process from a gender perspective;

- Provide sufficient resources to strengthen the capacity of the United Nations country team to integrate the promotion and protection of women's rights into all of its activities; and
- Provide funding for research, advocacy and projects on gender issues to the women's NGOs, research institutes and academics.

84. Finally, I recommend that civil society, including women's NGOs, human rights groups and the media:

- Conduct policy-oriented research in the area of violence and women and human rights violations;
- Work with the State to reaffirm its international commitments and ratify the Optional Protocol to CEDAW to signal that women's human rights are recognized and considered a priority;
- Examine viability of presenting women's rights violation cases before international human rights protection systems such as the Inter-American system;
- Join efforts to develop common strategies and campaigns to hold the Government accountable for the promotion and protection of women's rights;
- Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with local authorities to develop policies to address the problems;
- Adopt a strong lobbying and advocacy role, including through sensitizing the media to raise awareness about the gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes, and show sensitivity to the needs of the victims and their families when reporting violent crimes. In collaboration with other civil society actors, the media can promote equal sharing of paternal responsibilities and demand State accountability to investigate and prosecute perpetrators of violence.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on violence against women, its causes and consequences  
(E/CN.4/2005/72/Add.2, para. 82 (b)).

82. (b) Ensure protection by legislative, investigative and judicial reforms:
- Ratify the CEDAW Optional Protocol; bring legislation in line with CEDAW and ICCPR regarding the protection of life and access to health care;
  - Amend article 32 of the Code of Criminal Procedure;

- Remove all obstacles to the effective implementation of the law for the protection of women's rights and their access to justice and install effective investigation and monitoring mechanisms;
- Investigate all instances of alleged violence against women whether it occurs in the home, in the community, or workplace; prosecute perpetrators; and grant adequate compensation and support to survivors or victims' families;

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on violence against women, its causes and consequences  
(E/CN.4/2005/72/Add.2, paras. 82 to 84).

82. First, I recommend that the Government of El Salvador:
- (a) Create an information and knowledge base:
    - Support research on the links between family structure, paternity, child development and domestic violence and their implications for violent behaviour, including gang activity;
    - Enhance collection and analysis of sex-disaggregated statistics in all sectors particularly related to labour, health and the criminal justice system;
    - Develop a systematic method of recording and disseminating data on all forms of violence against women at all stages - from complaint to closure;
  - (b) Ensure protection by legislative, investigative and judicial reforms:
    - Ratify the CEDAW Optional Protocol; bring legislation in line with CEDAW and ICCPR regarding the protection of life and access to health care;
    - Amend article 32 of the Code of Criminal Procedure;
    - Remove all obstacles to the effective implementation of the law for the protection of women's rights and their access to justice and install effective investigation and monitoring mechanisms;
    - Investigate all instances of alleged violence against women whether it occurs in the home, in the community, or workplace; prosecute perpetrators; and grant adequate compensation and support to survivors or victims' families;
    - Adopt necessary laws to provide protection to victims of trafficking in accordance with international human rights standards including the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), and prosecute the users and abusers of trafficked persons;
  - (c) Strengthen institutional infrastructures:
    - Support the Office of the Procurator and provide it with full institutional backing, as well as the needed resources, so as to ensure its independence and

operations; take additional steps to guarantee the security of all members of the Office in the performance of their functions;

- Provide sufficient shelters/safe houses and counselling for women survivors of violence;
- Strengthen ISDEMU's capacity towards adopting a holistic strategy of work; to promote and monitor the national action plans for women in all ministries; and to outreach to civil society to better represent the priorities of diverse women's groups in the country;
- Provide ISDEMU with adequate budgetary allocations to enable its participation in relevant international and regional events, particularly the annual meetings of the Commission on the Status of Women, as well as to support the participation of a wide range of women's NGOs in its activities;

(d) Initiate training and awareness-raising programmes:

- Support training of the justice sector and the police on new legislation for the protection of women's rights, investigative techniques and sensitivity to needs of survivors of violence and their families;
- Conduct legal literacy campaigns to inform women of their rights and places to go to submit complaints;
- Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for recruitment of women, and assistance with health care;
- Conduct awareness-raising campaigns to generate zero tolerance for violence against women and behavioural change promoting non-violent masculine values;
- Integrate gender equality and human rights norms into school curricula and books that focus on equality in parenthood with particular emphasis on responsible fatherhood;

(e) Enforce and monitor international labour standards:

- Ensure that the Ministry of Labour exercises due diligence to violence and violations of labour standards in workplaces, particularly in the *maquilas* and private homes where girls and women work without any protection;
- Monitor the labour standards in the *maquilas*, investigate complaints and bring perpetrators to justice; and
- Include domestic work in the ILO/IPEC "worst forms of child labour" definition and take measures towards its elimination.

83. Further, I recommend that the international community:

- Expand the OHCHR mandate from technical cooperation to human rights protection and monitoring so that cases can be followed through the criminal justice system;

- Provide, through bilateral and multilateral funding, sufficient resources to strengthen the OHCHR capacity to support the Government's initiatives for effective implementation of international, regional and domestic law for the protection of women's rights with the aim of eliminating impunity for acts of violence against women, which would include training for judges and magistrates in international human rights instruments, introducing mechanisms for applying these principles in the domestic judicial process from a gender perspective;
- Provide sufficient resources to strengthen the capacity of the United Nations country team to integrate the promotion and protection of women's rights into all of its activities; and
- Provide funding for research, advocacy and projects on gender issues to the women's NGOs, research institutes and academics.

84. Finally, I recommend that civil society, including women's NGOs, human rights groups and the media:

- Conduct policy-oriented research in the area of violence and women and human rights violations;
- Work with the State to reaffirm its international commitments and ratify the Optional Protocol to CEDAW to signal that women's human rights are recognized and considered a priority;
- Examine viability of presenting women's rights violation cases before international human rights protection systems such as the Inter-American system;
- Join efforts to develop common strategies and campaigns to hold the Government accountable for the promotion and protection of women's rights;
- Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with local authorities to develop policies to address the problems;
- Adopt a strong lobbying and advocacy role, including through sensitizing the media to raise awareness about the gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes, and show sensitivity to the needs of the victims and their families when reporting violent crimes. In collaboration with other civil society actors, the media can promote equal sharing of paternal responsibilities and demand State accountability to investigate and prosecute perpetrators of violence.

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on violence against women, its causes and consequences  
(E/CN.4/2005/72/Add.2, para. 82 (b)).

82. (b) Ensure protection by legislative, investigative and judicial reforms:

- Remove all obstacles to the effective implementation of the law for the protection of women's rights and their access to justice and install effective investigation and monitoring mechanisms;
- Investigate all instances of alleged violence against women whether it occurs in the home, in the community, or workplace; prosecute perpetrators; and grant adequate compensation and support to survivors or victims' families;

## **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Special Rapporteur on violence against women, its causes and consequences  
(E/CN.4/2005/72/Add.2, para. 82 (c) (d) (e)).

82. (c) Strengthen institutional infrastructures:
- Provide sufficient shelters/safe houses and counselling for women survivors of violence;
  - Strengthen ISDEMU's capacity towards adopting a holistic strategy of work; to promote and monitor the national action plans for women in all ministries; and to outreach to civil society to better represent the priorities of diverse women's groups in the country;
- (d) Initiate training and awareness-raising programmes:
- Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for recruitment of women, and assistance with health care;
- (e) Enforce and monitor international labour standards:
- Ensure that the Ministry of Labour exercises due diligence to violence and violations of labour standards in workplaces, particularly in the *maquilas* and private homes where girls and women work without any protection;
  - Monitor the labour standards in the *maquilas*, investigate complaints and bring perpetrators to justice; and
  - Include domestic work in the ILO/IPEC "worst forms of child labour" definition and take measures towards its elimination.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on violence against women, its causes and consequences  
(E/CN.4/2005/72/Add.2, paras. 82 to 84).

82. First, I recommend that the Government of El Salvador:
- (a) Create an information and knowledge base:
    - Support research on the links between family structure, paternity, child development and domestic violence and their implications for violent behaviour, including gang activity;
    - Enhance collection and analysis of sex-disaggregated statistics in all sectors particularly related to labour, health and the criminal justice system;
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  - Conduct legal literacy campaigns to inform women of their rights and places to go to submit complaints;
  - Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for recruitment of women, and assistance with health care;
  - Conduct awareness-raising campaigns to generate zero tolerance for violence against women and behavioural change promoting non-violent masculine values;
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  - Provide, through bilateral and multilateral funding, sufficient resources to strengthen the OHCHR capacity to support the Government’s initiatives for effective implementation of international, regional and domestic law for the protection of women’s rights with the aim of eliminating impunity for acts of violence against women, which would include training for judges and magistrates in international human rights instruments, introducing mechanisms for applying these principles in the domestic judicial process from a gender perspective;
  - Provide sufficient resources to strengthen the capacity of the United Nations country team to integrate the promotion and protection of women’s rights into all of its activities; and

- Provide funding for research, advocacy and projects on gender issues to the women's NGOs, research institutes and academics.

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## **IX. The right to development and international cooperation**

n/a

## **X. Comments from the Government**<sup>15</sup>

n/a

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<sup>15</sup> As published as official documents of the CHR.



## **ETHIOPIA**

### **Introduction**

During the period under review, the Special Rapporteur on the right to food visited the country (please refer to document E/CN.4/2005/47/Add.1).

### **I. Institutional and legal framework for the promotion and protection of human rights**

Special Rapporteur on the right to food (E/CN.4/2005/47/Add.1, para. 61 (i)).

61. (i) The National Human Rights Commission and Ombudsman institution should be made fully operational, independent from Government and accorded adequate resources, in accordance with the Paris Principles, and should be given a mandate that includes monitoring compliance with the obligations to respect, protect and fulfill the right to food.

### **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to food (E/CN.4/2005/47/Add.1, para. 61 (l)).

61. (l) Serious efforts should be made to address discrimination, particularly against women. This will require the implementation of federal law, especially the Family Code, throughout all regions of the country, and increasing access to basic education and information.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

### **IV. Administration of justice and the rule of law**

Special Rapporteur on the right to food (E/CN.4/2005/47/Add.1, para. 61 (k)).

61. (k) Resources, including land and food aid, should never be used as a political tool. All reported violations of the right to food should be investigated in a transparent process and remedies should be made available for substantiated claims. Access to effective remedies for all violations of human rights should be improved.

### **V. Fundamental freedoms**

Special Rapporteur on the right to food (E/CN.4/2005/47/Add.1, para. 61 (j)).

61. (j) The work of national and international NGOs should be facilitated. In particular, human rights organizations, organizations working for press and academic freedom, and farmers associations should be seen as an essential component of a democratic society and should be able to participate fully in policy processes.

## **VI. Economic and social rights**

Special Rapporteur on the right to food (E/CN.4/2005/47/Add.1, para. 61 (a) to (h), (k) and (m)).

61. (a) The shift from an emergency to a development perspective, as already begun with the New Coalition for Food Security, must be a key priority for food security and the right to food. Government will need to be supported in this effort by an increase in donor funding for long-term development in both rural and urban sectors to ensure food security;

(b) New Coalition programmes, including resettlement, must be implemented in ways that avoid potential negative impact on livelihoods and the right to food. Mechanisms for accountability and effective compensatory mechanisms should be built into all programmes. The safety-net programme must reach all those in need, with adequate resources provided from Government and donors to ensure that people are not left excluded;

(c) Effective programmes to address population growth, land degradation and land tenure must form part of food security planning, given that the smaller size of landholdings are unable to feed a family. Urban development and the creation of off-farm employment should also form an important part of food security planning;

(d) Land tenure must be secured to ensure that people have secure rights over their own land. Land certification provides an important alternative to the privatization of the land, in terms of food security and the rights of the poorest. However, land certification should be applied rapidly and consistently across the country to all farmers regardless of their gender or ethnicity;

(e) Dependence on imported food aid should be reduced. Local purchase of food aid should be prioritized, avoiding negative impacts on local production and consumer prices, providing a mechanism to manage price volatility and encouraging the distribution of crops from surplus regions to deficit regions;

(f) For longer-term development, it is essential that priority be given to developing local markets before the development of export markets, otherwise dependence of imported food aid will remain even while Ethiopia exports food. This implies serious investment in roads, storage and marketing facilities;

(g) Programmes to harness water resources should be given priority in order to reduce long-term vulnerability to drought, especially shallow wells, river diversions and rainwater harvesting. The technologies chosen should be appropriate to the social and ecological environment. Everyone should have access to drinking water within 1 km from home;

(h) All government programme and policy designs should ensure appropriate levels of participation, non-discrimination, transparency and accountability;

(k) Resources, including land and food aid, should never be used as a political tool. All reported violations of the right to food should be investigated in a transparent process and remedies should be made available for substantiated claims. Access to effective remedies for all violations of human rights should be improved;

(m) Within the region, it is imperative that the Nile riparian States strengthen their cooperation for the fair sharing of the Nile river. Sharing water necessary for human consumption and for subsistence agriculture should be a priority;

**VII. Cultural rights**

n/a

**VIII. Situation of specific groups**

n/a

**IX. The right to development and international cooperation**

Special Rapporteur on the right to food (E/CN.4/2005/47/Add.1, para. 61 (n)).

61. (n) Finally, donor agencies should support the shift from emergency to long-term development funding. Donors should also ensure that their own countries' policies (such as on debt repayment or coffee tariffs) do not limit Ethiopia's opportunities for development and for ensuring the right to food.

**X. Comments from the Government**<sup>16</sup>

n/a

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<sup>16</sup> As published as official documents of the CHR.

## GUATEMALA

### Introduction

During the period under review, the following special procedures visited Guatemala:

- The Special Rapporteur on violence against women (please refer to document E/CN.4/2005/72/Add.3);
- The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (please refer to document E/CN.4/2005/18/Add.3).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.3, para. 72)

Government of Guatemala

1. End impunity for violence against women through legislative, investigative, and judicial reform:
  - Remove gender-discriminatory provisions in all law, approve the proposed legislation on sexual harassment as well as amend the Penal Code to make sexual harassment a crime;
  - Strengthen the administration of justice, with specific attention to the barriers in law and procedure that impede women's access to effective judicial remedies and protection, particularly in the area of violence against women;
  - Create a mechanism similar to CICIACS with a mandate to investigate parallel power structures as well as illegal activities undertaken by structures within the State, particularly in view of the serious allegations that some of the killings of women have been linked to organized crime and security forces, including the PNC;
  - Empower the Presidential Commission on Human Rights to institute a mechanism to address institutional accountability during investigation of these cases and the prosecution of all responsible parties to ensure that such crimes are not repeated in the future;
  - Investigate reports of domestic violence, issue protection orders promptly and prosecute perpetrators;
  - Adopt laws for the protection of victims of trafficking in accordance with international human rights standards, including the Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002;
  - Adopt a policy of demobilization to regulate and prosecute the use of firearms;
  - Ensure that the impact and consequences of the acts of violence committed against women during the armed conflict are adequately reflected in the design and execution of the national reparations plan and other measures of reparation and rehabilitation;
  - Strengthen labour legislation and labour inspection services to ensure the right of women to just, equitable and healthy conditions of work; promote equal pay and

benefits for equal work; and safeguard the rights of women and girls employed in the formal and informal sectors, in particular those in domestic work;

- Create mechanisms to control and prevent fraudulent adoptions and related incidents of abduction of children.
3. Create a gender-sensitive information and knowledge base:
- Standardize the collection and analysis of sex-disaggregated data on violence against women through a common system for registering complaints throughout the country;
  - Support research on violence against women and the links between family structure, paternity, child development and domestic violence and their implications on violent behaviour;
  - Use gender-sensitive data and research for informed policy formulation to end violence and for monitoring and evaluation of progress.
4. Strengthen institutional infrastructure:
- Strengthen the legal and financial base of State institutions dealing with women's rights: the Women's Office of the Ministerio Público (Fiscalía de la Mujer) with regional representation where the incidence of violence is highest; the Office for the Defence of Indigenous Women (Defensoría de la Mujer Indígena); the Office for the Defence of Women's Rights (Defensoría de los Derechos de la Mujer) of the Ombudsman's Office; the Presidential Secretariat for Women (SEPREM), and the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI), among others;
  - Define clearly the mandates of the various national machineries for the advancement of women to avoid duplication, increase efficiency and ensure coordination of all public policy on gender issues from a single body;
  - Ensure implementation of PLANОВI (2004-2014) and the National Policy for the Promotion and Development of Guatemalan Women and the Plan for Achieving Equal Opportunities 2001-2006, and allocate the necessary resources for their successful functioning;
  - Take the necessary steps for the establishment of an office of the High Commissioner for Human Rights in Guatemala and provide it with political and administrative support to enable it to contribute to the initiatives towards combating violence against women and instituting human rights principles.
5. Promote training, operational and awareness-raising programmes:
- Intensify and amplify existing efforts to train officials, particularly those within the PNC and the Ministerio Público responsible for receiving complaints on gender-based violence with a view to increasing the sensitivity and efficacy of their response to victims and their families;
  - Provide gender training, technical assistance, material resources and oversight to the entities responsible for State security - the PNC, the Ministerio Público, the judiciary and technical personnel such as forensic specialists;

- Introduce expertise in the social and psychological fields to the institutions dealing with violence against women, particularly the PNC and the judiciary;
- Work with authorities in indigenous communities to institute programmes that promote the observance of women's and children's rights in the exercise of traditional law and conventions to avoid legal pluralism and multiple justice systems that perpetuate gender discrimination;
- Conduct media campaigns to generate zero tolerance for violence against women, eliminate all forms of discrimination and promote respect for human rights;
- Conduct legal literacy campaigns to inform women of their rights (Law on the Prevention, Punishment and Eradication of Intrafamilial Violence, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the Convention of Belém do Pará) and the places to go to submit complaints;
- Ensure that girls have equal access to primary education and support the completion of primary school as a minimum standard, and provide girls and women equal access to secondary education, and technical and professional training;
- Eliminate language barriers in education through bilingual education where possible, and special Spanish language classes for children of indigenous communities, particularly to increase indigenous girls' access to education;
- Promote through school curricula and media campaigns the recognition of the multicultural nature of society and its value in cultural enrichment.

#### Civil society, including human rights organizations and the media

- Develop solidarity networks with diverse groups, with special attention to ensuring participation of indigenous women's organizations, to develop common strategies for the advancement of women and join efforts to hold Government accountable for the promotion and protection of women's rights;
- Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with authorities to develop policies to address the problems;
- Undertake research on the nature of domestic violence within plural legal/customary traditions, particularly in resolving disputes and conflicts, and on the impact of war and displacement on the family structure and social fabric of diverse communities;
- Continue to play a strong advocacy role, including through work with the media to raise awareness about the scale and gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes and show sensitivity for the needs of the victims and their families when reporting incidents of violence against women. The media, in collaboration with civil society, can promote the sharing of paternal responsibilities and demand State accountability for investigating and prosecuting perpetrators of violence.

The international community

- Prioritize through bilateral and multilateral funding the initiatives of women's organizations, research institutes and academia for research, advocacy and operational projects that aim to contribute towards the advancement of women, including women of indigenous groups;
- Provide sufficient resources to strengthen the capacity of the United Nations Country Team to integrate the promotion and protection of women's rights into all of its activities;
- Pursue the Memorandum of Understanding with the Government of Guatemala for the creation of an OHCHR field office in Guatemala;
- Promote a CICIACS-like formation to assist the Government to strengthen the capacity of State mechanisms and apparatuses to enable the establishment of rule of law in the country.

## **II. Non-discrimination and equality before the law**

The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3, paras. 47 (a) (b) (c) (d) (h) (i) and 48)

47. (a) Compte tenu de la prégnance du racisme et de la discrimination raciale, le Rapporteur spécial considère qu'un acte politique fort devrait être accompli par le Gouvernement pour témoigner de sa volonté d'éliminer ce fléau. À l'occasion d'un discours solennel, le Président de la République devrait reconnaître formellement la réalité et les conséquences sociales, économiques et culturelles de ces phénomènes et manifester l'engagement du Gouvernement à les éliminer sur une base démocratique et avec la participation des peuples concernés, autochtones et d'origine africaine.

(b) Le Rapporteur spécial recommande, en outre, au Gouvernement d'aller au-delà de la reconnaissance formelle de la diversité ethnique pour l'inscrire dans la Constitution, conformément à l'Accord relatif à l'identité et aux droits des peuples autochtones.

(c) Ayant noté une absence de coordination entre les institutions et les départements chargés de lutter contre le racisme ainsi qu'un manque de ressources financières ou des allocations inadéquates de ressources, le Rapporteur spécial recommande une approche intégrée de la lutte contre le racisme et la discrimination raciale se traduisant par l'élaboration d'un programme national de lutte contre le racisme et la discrimination et de promotion d'un multiculturalisme égalitaire, interactif et démocratique concomitant, en vue de la construction d'une société fondée sur le pluralisme ethnique et culturel qui favorise le dialogue et l'interaction entre toutes ses composantes. Ce programme devrait être basé sur le Programme d'action de Durban.

(d) Les dispositions pertinentes des Accords de paix, notamment l'Accord relatif à l'identité et aux droits des populations autochtones, devraient également faire l'objet d'une évaluation critique en ce qui concerne ses progrès ainsi que ses limites. Dans ce contexte, la lutte contre le racisme et la discrimination raciale doit être liée à la promotion à long terme du multiculturalisme sur la base du principe de l'unité et de la diversité : la reconnaissance, le respect et la promotion des spécificités et singularités identitaires, ethniques, culturelles, spirituelles et culturelles de tous les peuples et communautés, ainsi que la promotion d'une dynamique d'interaction et d'interfécondation entre eux tous.

(h) La Commission présidentielle contre la discrimination raciale à l'égard des peuples autochtones et la Commission présidentielle des droits de l'homme devraient être soutenues par une loi les rattachant au Congrès afin de leur conférer une indépendance statutaire, conformément aux Principes des Nations Unies concernant les institutions nationales de défense et de promotion des droits de l'homme (« Principes de Paris »); dans la même perspective, ces commissions devraient être dotées de ressources financières propres inscrites au budget annuel de l'État.

(i) Le Rapporteur spécial encourage le Congrès à accélérer le processus d'adoption de la loi autorisant le Gouvernement à faire la déclaration reconnaissant la compétence du Comité pour l'élimination de la discrimination raciale en vertu de l'article 14 de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale.

48. La lutte contre le racisme et la discrimination raciale doit tenir compte de sa dimension régionale en Amérique centrale dont les sociétés partagent non seulement des similarités démographiques et ethnoculturelles mais surtout un héritage historique de racisme et de discrimination, amplifié par la violence politique moderne. Les pays de cette région sont également marqués par une dynamique de mouvement de populations qui subissent à des degrés divers des pratiques de discrimination dans les différents pays. Le Rapporteur spécial recommande en conséquence que l'Organisation des États américains (OEA) et, notamment, la Commission interaméricaine des droits de l'homme accordent une place centrale dans la construction de la paix à l'éradication en profondeur du racisme et de la discrimination raciale dans la perspective de la construction d'un multiculturalisme régional, démocratique, égalitaire et interactif. L'OEA devrait appuyer les efforts des États de l'Amérique centrale par des études sur les constructions identitaires multiethniques et leurs manifestations, ainsi que par une assistance en vue d'élaborer des législations nationales et régionales coordonnées, de renforcer les institutions de protection des droits de l'homme et de la société civile, et de parvenir à la révision des programmes et systèmes éducatifs et médiatiques.

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.3, para. 72)

Government of Guatemala

1. End impunity for violence against women through legislative, investigative, and judicial reform:

- Remove gender-discriminatory provisions in all law, approve the proposed legislation on sexual harassment as well as amend the Penal Code to make sexual harassment a crime;
- Strengthen the administration of justice, with specific attention to the barriers in law and procedure that impede women's access to effective judicial remedies and protection, particularly in the area of violence against women;

**III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3, para. 47 (g))

47. (g) Le processus de catharsis initié par la Commission d'éclaircissement historique (*Comisión para el Esclarecimiento Histórico*), chargée de faire la lumière sur les violations des droits de l'homme dans le passé, devrait être poursuivi afin d'effacer le vécu douloureux de la



discrimination et mettre fin à l'impunité des responsables des violences politiques; les recommandations faites par cette Commission en ce qui concerne la préservation de la mémoire des victimes du conflit armé, la réparation morale et matérielle des victimes ou de leurs parents, ainsi que l'établissement d'un programme de santé mentale destiné à soigner les personnes traumatisées psychologiquement par le conflit armé, devraient être rapidement mises en œuvre.

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.3, para. 72)

Government of Guatemala

1. End impunity for violence against women through legislative, investigative, and judicial reform:

- Remove gender-discriminatory provisions in all law, approve the proposed legislation on sexual harassment as well as amend the Penal Code to make sexual harassment a crime;
- Strengthen the administration of justice, with specific attention to the barriers in law and procedure that impede women's access to effective judicial remedies and protection, particularly in the area of violence against women;
- Create a mechanism similar to CICIACS with a mandate to investigate parallel power structures as well as illegal activities undertaken by structures within the State, particularly in view of the serious allegations that some of the killings of women have been linked to organized crime and security forces, including the PNC;
- Empower the Presidential Commission on Human Rights to institute a mechanism to address institutional accountability during investigation of these cases and the prosecution of all responsible parties to ensure that such crimes are not repeated in the future;
- Investigate reports of domestic violence, issue protection orders promptly and prosecute perpetrators;
- Adopt laws for the protection of victims of trafficking in accordance with international human rights standards, including the Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002;
- Adopt a policy of demobilization to regulate and prosecute the use of firearms;
- Ensure that the impact and consequences of the acts of violence committed against women during the armed conflict are adequately reflected in the design and execution of the national reparations plan and other measures of reparation and rehabilitation;
- Strengthen labour legislation and labour inspection services to ensure the right of women to just, equitable and healthy conditions of work; promote equal pay and benefits for equal work; and safeguard the rights of women and girls employed in the formal and informal sectors, in particular those in domestic work;
- Create mechanisms to control and prevent fraudulent adoptions and related incidents of abduction of children.

2. Provide protective and support services to women facing actual or risk of violence:
  - Promote the opening and maintenance of shelters for women and their children who have encountered or are threatened with violence;
  - Institute psychosocial and economic programmes for the mental health and general well-being of women victims of the civil war, the majority being indigenous women, including through compensation;
  - Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for their employment, assistance with health care and subsidies for housing;
  - Initiate consultations with representatives of civil society organizations and international observers to enable their collaboration with relevant government entities to propose, coordinate and oversee the implementation of effective action to guarantee protection for women from violence.
3. Create a gender-sensitive information and knowledge base:
  - Standardize the collection and analysis of sex-disaggregated data on violence against women through a common system for registering complaints throughout the country;
  - Support research on violence against women and the links between family structure, paternity, child development and domestic violence and their implications on violent behaviour;
  - Use gender-sensitive data and research for informed policy formulation to end violence and for monitoring and evaluation of progress.
4. Strengthen institutional infrastructure:
  - Strengthen the legal and financial base of State institutions dealing with women's rights: the Women's Office of the Ministerio Público (Fiscalía de la Mujer) with regional representation where the incidence of violence is highest; the Office for the Defence of Indigenous Women (Defensoría de la Mujer Indígena); the Office for the Defence of Women's Rights (Defensoría de los Derechos de la Mujer) of the Ombudsman's Office; the Presidential Secretariat for Women (SEPREM), and the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI), among others;
  - Define clearly the mandates of the various national machineries for the advancement of women to avoid duplication, increase efficiency and ensure coordination of all public policy on gender issues from a single body;
  - Ensure implementation of PLANNOVI (2004-2014) and the National Policy for the Promotion and Development of Guatemalan Women and the Plan for Achieving Equal Opportunities 2001-2006, and allocate the necessary resources for their successful functioning;
  - Take the necessary steps for the establishment of an office of the High Commissioner for Human Rights in Guatemala and provide it with political and administrative

support to enable it to contribute to the initiatives towards combating violence against women and instituting human rights principles.

5. Promote training, operational and awareness-raising programmes:

- Intensify and amplify existing efforts to train officials, particularly those within the PNC and the Ministerio Público responsible for receiving complaints on gender-based violence with a view to increasing the sensitivity and efficacy of their response to victims and their families;
- Provide gender training, technical assistance, material resources and oversight to the entities responsible for State security - the PNC, the Ministerio Público, the judiciary and technical personnel such as forensic specialists;
- Introduce expertise in the social and psychological fields to the institutions dealing with violence against women, particularly the PNC and the judiciary;
- Work with authorities in indigenous communities to institute programmes that promote the observance of women's and children's rights in the exercise of traditional law and conventions to avoid legal pluralism and multiple justice systems that perpetuate gender discrimination;
- Conduct media campaigns to generate zero tolerance for violence against women, eliminate all forms of discrimination and promote respect for human rights;
- Conduct legal literacy campaigns to inform women of their rights (Law on the Prevention, Punishment and Eradication of Intrafamilial Violence, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the Convention of Belém do Pará) and the places to go to submit complaints;
- Ensure that girls have equal access to primary education and support the completion of primary school as a minimum standard, and provide girls and women equal access to secondary education, and technical and professional training;
- Eliminate language barriers in education through bilingual education where possible, and special Spanish language classes for children of indigenous communities, particularly to increase indigenous girls' access to education;
- Promote through school curricula and media campaigns the recognition of the multicultural nature of society and its value in cultural enrichment.

Civil society, including human rights organizations and the media

- Develop solidarity networks with diverse groups, with special attention to ensuring participation of indigenous women's organizations, to develop common strategies for the advancement of women and join efforts to hold Government accountable for the promotion and protection of women's rights;
- Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with authorities to develop policies to address the problems;

- Undertake research on the nature of domestic violence within plural legal/customary traditions, particularly in resolving disputes and conflicts, and on the impact of war and displacement on the family structure and social fabric of diverse communities;
- Continue to play a strong advocacy role, including through work with the media to raise awareness about the scale and gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes and show sensitivity for the needs of the victims and their families when reporting incidents of violence against women. The media, in collaboration with civil society, can promote the sharing of paternal responsibilities and demand State accountability for investigating and prosecuting perpetrators of violence.

#### The international community

- Prioritize through bilateral and multilateral funding the initiatives of women's organizations, research institutes and academia for research, advocacy and operational projects that aim to contribute towards the advancement of women, including women of indigenous groups;
- Provide sufficient resources to strengthen the capacity of the United Nations Country Team to integrate the promotion and protection of women's rights into all of its activities;
- Pursue the Memorandum of Understanding with the Government of Guatemala for the creation of an OHCHR field office in Guatemala;
- Promote a CICIACS-like formation to assist the Government to strengthen the capacity of State mechanisms and apparatuses to enable the establishment of rule of law in the country.

#### **IV. Administration of justice and the rule of law**

##### Special Rapporteur on violence against women (E/CN.4/2005/72/Add.3, para. 72)

##### Government of Guatemala

1. End impunity for violence against women through legislative, investigative, and judicial reform:
  - Remove gender-discriminatory provisions in all law, approve the proposed legislation on sexual harassment as well as amend the Penal Code to make sexual harassment a crime;
  - Strengthen the administration of justice, with specific attention to the barriers in law and procedure that impede women's access to effective judicial remedies and protection, particularly in the area of violence against women;
  - Create a mechanism similar to CICIACS with a mandate to investigate parallel power structures as well as illegal activities undertaken by structures within the State, particularly in view of the serious allegations that some of the killings of women have been linked to organized crime and security forces, including the PNC;
  - Empower the Presidential Commission on Human Rights to institute a mechanism to address institutional accountability during investigation of these cases and the

prosecution of all responsible parties to ensure that such crimes are not repeated in the future;

- Investigate reports of domestic violence, issue protection orders promptly and prosecute perpetrators;
- Adopt laws for the protection of victims of trafficking in accordance with international human rights standards, including the Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002;
- Adopt a policy of demobilization to regulate and prosecute the use of firearms;
- Ensure that the impact and consequences of the acts of violence committed against women during the armed conflict are adequately reflected in the design and execution of the national reparations plan and other measures of reparation and rehabilitation;
- Strengthen labour legislation and labour inspection services to ensure the right of women to just, equitable and healthy conditions of work; promote equal pay and benefits for equal work; and safeguard the rights of women and girls employed in the formal and informal sectors, in particular those in domestic work;
- Create mechanisms to control and prevent fraudulent adoptions and related incidents of abduction of children.

## **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.3, para. 72)

Government of Guatemala

2. Provide protective and support services to women facing actual or risk of violence:
  - Promote the opening and maintenance of shelters for women and their children who have encountered or are threatened with violence;
  - Institute psychosocial and economic programmes for the mental health and general well-being of women victims of the civil war, the majority being indigenous women, including through compensation;
  - Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for their employment, assistance with health care and subsidies for housing;
  - Initiate consultations with representatives of civil society organizations and international observers to enable their collaboration with relevant government entities to propose, coordinate and oversee the implementation of effective action to guarantee protection for women from violence.

- Ensure that girls have equal access to primary education and support the completion of primary school as a minimum standard, and provide girls and women equal access to secondary education, and technical and professional training;
- Eliminate language barriers in education through bilingual education where possible, and special Spanish language classes for children of indigenous communities, particularly to increase indigenous girls' access to education;
- Promote through school curricula and media campaigns the recognition of the multicultural nature of society and its value in cultural enrichment.
- Strengthen labour legislation and labour inspection services to ensure the right of women to just, equitable and healthy conditions of work; promote equal pay and benefits for equal work; and safeguard the rights of women and girls employed in the formal and informal sectors, in particular those in domestic work;

## **VII. Cultural rights**

The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3, para. 47 (f))

47. (f) Un accent particulier doit être mis sur la question centrale de la construction identitaire pluraliste du Guatemala par la promotion d'une éducation multi- et interculturelle avec une attention particulière portée à l'écriture et à l'enseignement de l'histoire, au système de valeurs et au développement d'un véritable multilinguisme dans toutes les sphères de la société; dans ce contexte, une attention particulière doit être accordée à deux dimensions centrales de l'identité nationale : la promotion du multiculturalisme dans les médias, tant dans leur contenu que dans leurs structures de contrôle et de fonctionnement, et la dynamique de culture nationale par le lien entre la promotion du patrimoine architectural et historique et le développement de la créativité et des pratiques culturelles vivantes de tous les peuples et communautés. Le développement de médias locaux, communautaires, et libres, dotés de ressources adéquates, doit s'inscrire dans ce cadre.

48. L'OEA devrait également promouvoir le développement d'un tourisme interculturel articulé autour des axes suivants : l'existence d'un patrimoine géohistorique commun, la vitalité des pratiques et expressions culturelles et spirituelles authentiques et leurs interactions profondes dans le temps et dans l'espace. Le tourisme interculturel peut permettre à la fois de combattre la discrimination par la réhabilitation des identités historiquement niées ou bafouées, d'éviter la folklorisation des cultures inhérente aux pratiques modernes du tourisme de masse, et de promouvoir le lien fondamental entre la terre et la culture, « terres-sources », au cœur des revendications des peuples et communautés autochtones et d'origine africaine.

## **VIII. Situation of specific groups**

The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2005/18/Add.3, para. 47 (e))

47. (e) Compte tenu de l'impact profond et durable du racisme et de la discrimination dans la structuration de la société guatémaltèque, le Rapporteur spécial recommande l'adoption d'un programme de mesures volontaristes ou positives (*affirmative action*) en faveur des peuples historiquement discriminés, autochtones et d'origine africaine.

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.3, para. 72)

Government of Guatemala

1. End impunity for violence against women through legislative, investigative, and judicial reform:
  - Remove gender-discriminatory provisions in all law, approve the proposed legislation on sexual harassment as well as amend the Penal Code to make sexual harassment a crime;
  - Strengthen the administration of justice, with specific attention to the barriers in law and procedure that impede women's access to effective judicial remedies and protection, particularly in the area of violence against women;
  - Create a mechanism similar to CICIACS with a mandate to investigate parallel power structures as well as illegal activities undertaken by structures within the State, particularly in view of the serious allegations that some of the killings of women have been linked to organized crime and security forces, including the PNC;
  - Empower the Presidential Commission on Human Rights to institute a mechanism to address institutional accountability during investigation of these cases and the prosecution of all responsible parties to ensure that such crimes are not repeated in the future;
  - Investigate reports of domestic violence, issue protection orders promptly and prosecute perpetrators;
  - Adopt laws for the protection of victims of trafficking in accordance with international human rights standards, including the Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002;
  - Adopt a policy of demobilization to regulate and prosecute the use of firearms;
  - Ensure that the impact and consequences of the acts of violence committed against women during the armed conflict are adequately reflected in the design and execution of the national reparations plan and other measures of reparation and rehabilitation;
  - Strengthen labour legislation and labour inspection services to ensure the right of women to just, equitable and healthy conditions of work; promote equal pay and benefits for equal work; and safeguard the rights of women and girls employed in the formal and informal sectors, in particular those in domestic work;
  - Create mechanisms to control and prevent fraudulent adoptions and related incidents of abduction of children.
2. Provide protective and support services to women facing actual or risk of violence:
  - Promote the opening and maintenance of shelters for women and their children who have encountered or are threatened with violence;

- Institute psychosocial and economic programmes for the mental health and general well-being of women victims of the civil war, the majority being indigenous women, including through compensation;
  - Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for their employment, assistance with health care and subsidies for housing;
  - Initiate consultations with representatives of civil society organizations and international observers to enable their collaboration with relevant government entities to propose, coordinate and oversee the implementation of effective action to guarantee protection for women from violence.
3. Create a gender-sensitive information and knowledge base:
- Standardize the collection and analysis of sex-disaggregated data on violence against women through a common system for registering complaints throughout the country;
  - Support research on violence against women and the links between family structure, paternity, child development and domestic violence and their implications on violent behaviour;
  - Use gender-sensitive data and research for informed policy formulation to end violence and for monitoring and evaluation of progress.
4. Strengthen institutional infrastructure:
- Strengthen the legal and financial base of State institutions dealing with women's rights: the Women's Office of the Ministerio Público (Fiscalía de la Mujer) with regional representation where the incidence of violence is highest; the Office for the Defence of Indigenous Women (Defensoría de la Mujer Indígena); the Office for the Defence of Women's Rights (Defensoría de los Derechos de la Mujer) of the Ombudsman's Office; the Presidential Secretariat for Women (SEPREM), and the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI), among others;
  - Define clearly the mandates of the various national machineries for the advancement of women to avoid duplication, increase efficiency and ensure coordination of all public policy on gender issues from a single body;
  - Ensure implementation of PLANNOVI (2004-2014) and the National Policy for the Promotion and Development of Guatemalan Women and the Plan for Achieving Equal Opportunities 2001-2006, and allocate the necessary resources for their successful functioning;
  - Take the necessary steps for the establishment of an office of the High Commissioner for Human Rights in Guatemala and provide it with political and administrative support to enable it to contribute to the initiatives towards combating violence against women and instituting human rights principles.



5. Promote training, operational and awareness-raising programmes:
- Intensify and amplify existing efforts to train officials, particularly those within the PNC and the Ministerio Público responsible for receiving complaints on gender-based violence with a view to increasing the sensitivity and efficacy of their response to victims and their families;
  - Provide gender training, technical assistance, material resources and oversight to the entities responsible for State security - the PNC, the Ministerio Público, the judiciary and technical personnel such as forensic specialists;
  - Introduce expertise in the social and psychological fields to the institutions dealing with violence against women, particularly the PNC and the judiciary;
  - Work with authorities in indigenous communities to institute programmes that promote the observance of women's and children's rights in the exercise of traditional law and conventions to avoid legal pluralism and multiple justice systems that perpetuate gender discrimination;
  - Conduct media campaigns to generate zero tolerance for violence against women, eliminate all forms of discrimination and promote respect for human rights;
  - Conduct legal literacy campaigns to inform women of their rights (Law on the Prevention, Punishment and Eradication of Intrafamilial Violence, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the Convention of Belém do Pará) and the places to go to submit complaints;
  - Ensure that girls have equal access to primary education and support the completion of primary school as a minimum standard, and provide girls and women equal access to secondary education, and technical and professional training;
  - Eliminate language barriers in education through bilingual education where possible, and special Spanish language classes for children of indigenous communities, particularly to increase indigenous girls' access to education;
  - Promote through school curricula and media campaigns the recognition of the multicultural nature of society and its value in cultural enrichment.

Civil society, including human rights organizations and the media

- Develop solidarity networks with diverse groups, with special attention to ensuring participation of indigenous women's organizations, to develop common strategies for the advancement of women and join efforts to hold Government accountable for the promotion and protection of women's rights;
- Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with authorities to develop policies to address the problems;
- Undertake research on the nature of domestic violence within plural legal/customary traditions, particularly in resolving disputes and conflicts, and on the impact of war and displacement on the family structure and social fabric of diverse communities;

- Continue to play a strong advocacy role, including through work with the media to raise awareness about the scale and gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes and show sensitivity for the needs of the victims and their families when reporting incidents of violence against women. The media, in collaboration with civil society, can promote the sharing of paternal responsibilities and demand State accountability for investigating and prosecuting perpetrators of violence.

The international community

- Prioritize through bilateral and multilateral funding the initiatives of women's organizations, research institutes and academia for research, advocacy and operational projects that aim to contribute towards the advancement of women, including women of indigenous groups;
- Provide sufficient resources to strengthen the capacity of the United Nations Country Team to integrate the promotion and protection of women's rights into all of its activities;
- Pursue the Memorandum of Understanding with the Government of Guatemala for the creation of an OHCHR field office in Guatemala;
- Promote a CICIACS-like formation to assist the Government to strengthen the capacity of State mechanisms and apparatuses to enable the establishment of rule of law in the country.

#### **IX. The right to development and international cooperation**

n/a

#### **X. Comments from the Government**<sup>17</sup>

n/a

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<sup>17</sup> As published as official documents of the CHR.

## HAÏTI

### Introduction

Au cours de la période concernée, l'Expert indépendant sur la situation des droits de l'homme en Haïti a effectué deux visites dans le pays (veuillez vous référer au document E/CN.4/2005/123).

### I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

n/a

### II. Non-discrimination et égalité devant la loi

n/a

### III. Le droit à la vie; le droit à la liberté et la sécurité de la personne; le droit à l'intégrité physique et morale

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2005/123, para. 95)

95. Mise à l'étude, en consultation avec le représentant du Comité international de la Croix-Rouge, rencontré à ce sujet par l'Expert indépendant, et en coopération avec l'Office de la protection du citoyen ainsi que, en tant que de besoin, avec les ONG, de la création d'une banque de données sur les disparitions et exécutions sommaires, qui pourrait être élargie ultérieurement à d'autres types de violations graves, priorité étant alors donnée aux cas d'agressions sexuelles.

### IV. Administration de la justice et état de droit

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2005/123, paras. 92 à 94 et 96 à 101)

92. Accorder une haute priorité à la reconstruction ou remise en état des équipements de la justice (palais et infrastructures administratives), de la police (commissariats, locaux de garde à vue, véhicules, armement et matériels de protection, etc.) et de l'administration pénitentiaire afin que puissent être effectivement applicables les prochaines réformes dont l'administration de la justice a besoin.

93. Adoption dans les meilleurs délais possibles des réformes suivantes:

a) Statut de l'École de la magistrature et des filières de formation des magistrats, avocats, greffiers et commis de parquet;

b) Statut du Conseil supérieur de la magistrature, en tant que clef de voûte d'un pouvoir judiciaire autonome par rapport au pouvoir politique;

c) Statut de la magistrature garantissant, notamment, la transparence des nominations et promotions et clarifiant le statut hybride des juges de paix, dont la fonction relève tout à la fois du siège et du parquet.

94. Adoption conjointe par les Ministères de la justice et de la santé des textes (enlisés depuis trois ans) concernant l'Institut médico-légal, à savoir:

a) Signature de la circulaire validant les formulaires types de réquisitions;

- b) Adoption de l'acte réglementaire fixant le cadre juridique de l'Institut;
- c) Adoption du texte relatif à la tarification des vacations.

96. Mise à jour et développement de la base de données de l'administration pénitentiaire, y compris en tenant compte des prisonniers évadés repris et de ceux toujours en fuite.

97. Faciliter, en coopération avec les ONG, les milieux universitaires et judiciaires et éventuellement dans le cadre de microprogrammes de coopération décentralisée, l'accès au droit et à la justice par le développement de Bureaux d'aide juridique (BAJ), en commençant par les trois tribunaux pilotes.

98. Charger l'Inspection générale de la police du suivi de la circulaire prescrivant, pendant le service, le port de l'uniforme et de la carte professionnelle et prohibant l'utilisation de véhicules sans plaque d'immatriculation et l'usage de la cagoule. Si dans certains cas le port de la cagoule devait être autorisé pour des raisons de sécurité – ainsi que certains policiers l'ont fait valoir auprès de l'Expert indépendant –, il conviendrait qu'une telle dérogation soit strictement réglementée et contrôlée.

99. Mettre un terme au détournement de la procédure d'*exequatur* par certains parquets qui l'utilisent pour tenir en échec des décisions de mise en liberté ordonnées par les juges.

100. En ce qui concerne la Cour de cassation, adopter les réformes suivantes:

- a) Organisation d'un séminaire technique sur la manière, en jurisprudence, de rendre opérationnel l'article 276.2 de la Constitution, qui prévoit la primauté des traités sur la loi interne;
- b) Publication des arrêts de principe de la Cour de cassation.

101. Dresser un état des lieux des trois tribunaux pilotes et prendre des mesures permettant de relancer cette initiative et de la dynamiser. Examiner les possibilités d'une coopération décentralisée avec d'autres tribunaux francophones de la région des Caraïbes.

## **V. Libertés fondamentales**

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2005/123, para. 102 (a))

102. Pour le long terme, jeter les bases:

- a) De la réforme de l'état civil, condition de l'exercice plein des droits civils et politiques, en particulier du droit de vote;

## **VI. Droits économiques et sociaux**

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2005/123, para. 102 (b))

102. Pour le long terme, jeter les bases:

- b) Du cadastre, condition du développement de l'économie, notamment rurale.

**VII. Droits culturels**

n/a

**VIII. Situation des groupes spécifiques**

n/a

**IX. Le droit au développement et la coopération internationale**

n/a

**X. Commentaires reçus du Gouvernement**<sup>18</sup>

n/a

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<sup>18</sup> As published as official documents of the CHR.

## HONDURAS

### Introduction

Au cours de la période concernée, le Rapporteur spécial sur le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée a visité le pays (veuillez vous référer au document E/CN.4/2005/18/Add5).

### I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, paras. 31 et 32 (a) à (d))

31. Le Rapporteur spécial note les progrès accomplis par le Gouvernement pour corriger l'incidence de l'héritage de discrimination dont sont victimes les populations autochtones et garifuna, notamment les mesures relatives à la diversité de la société hondurienne, prises dans le domaine juridique et légal. (...)

32. (a) (...) le Rapporteur spécial recommande la reconnaissance solennelle, au plus haut niveau de l'État, de la réalité et de la profondeur du racisme et de la discrimination raciale, ainsi que de leur incidence sur toutes les structures de la société. Ce serait là un message fort, de nature morale et politique, en direction des populations concernées et de tout le pays;

32. (b) Le Gouvernement hondurien devrait s'engager de manière plus ferme dans la lutte contre la discrimination raciale notamment par l'élaboration, avec la participation des communautés concernées, d'un programme d'action global contre le racisme et la discrimination raciale et pour la construction d'une société multiculturelle, qui s'inspirerait de la Déclaration et du Programme d'action de Durban. Des mesures effectives devraient être prises pour s'attaquer aux effets les plus visibles de la discrimination raciale dans les domaines de l'éducation, de la santé et du logement;

32. (c) La lutte contre le racisme et la discrimination raciale doit s'articuler autour d'une politique d'information en direction des populations victimes de discrimination, tant en ce qui concerne leurs droits et voies de recours que les politiques et programmes du Gouvernement; dans ce contexte, les populations doivent être informées des engagements internationaux du Gouvernement dans le domaine des droits de l'homme et de la lutte contre le racisme, par la diffusion large des instruments internationaux pertinents, du document final de la Conférence mondiale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, tenue à Durban, ainsi que des rapports périodiques soumis par le Honduras au Comité pour l'élimination de la discrimination raciale;

32. (d) Le Comité pour l'élimination de la discrimination raciale devrait être doté de moyens humains et financiers adéquats et être notamment chargé de la mise en oeuvre du programme d'action global contre le racisme et la discrimination raciale et pour la construction d'une société multiculturelle;

## **II. Non-discrimination et égalité devant la loi**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, paras. 32 et 32 (b) (f))

32. Mais le Rapporteur spécial a constaté également que la carte sociale de la pauvreté et de la marginalisation et la carte géographique des communautés victimes de discrimination se superposent. (...)

32. (b) Le Gouvernement hondurien devrait s'engager de manière plus ferme dans la lutte contre la discrimination raciale notamment par l'élaboration, avec la participation des communautés concernées, d'un programme d'action global contre le racisme et la discrimination raciale et pour la construction d'une société multiculturelle, qui s'inspirerait de la Déclaration et du Programme d'action de Durban. Des mesures effectives devraient être prises pour s'attaquer aux effets les plus visibles de la discrimination raciale dans les domaines de l'éducation, de la santé et du logement;

32. (f) En consultation avec les populations autochtones et garifuna, le Gouvernement devrait mettre en place une politique de développement économique et social plus cohérente et conséquente à leur intention; dans ce contexte et compte tenu de la profondeur historique et de l'incidence du racisme et de la discrimination sur les plans économique, social et culturel, le Rapporteur spécial recommande la mise en oeuvre, dans un processus démocratique et avec la participation des communautés concernées, d'un programme de discrimination positive en faveur des populations autochtones et afro-honduriennes, comme noyau central du programme d'action global contre le racisme et la discrimination raciale;

## **III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne; le droit à l'intégrité physique et morale**

n/a

## **IV. Administration de la justice et état de droit**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, para. 31)

31. (...) Les réformes de la Cour suprême de justice représentent des étapes particulièrement significatives pour le renforcement de l'état de droit au Honduras. Le Rapporteur spécial recommande que l'ensemble du système judiciaire s'inspire, tant dans son processus de nominations que dans son fonctionnement, des principes d'indépendance et de rigueur qui gouvernent la Cour suprême de justice.

## **V. Libertés fondamentales**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, para. 32 (j))

32. (j) (...) Le Rapporteur spécial recommande que les médias adoptent un code de conduite et fassent en sorte que, tant dans leurs programmes que dans leurs structures de direction et de gestion, soit reflétée la diversité ethnique, culturelle et spirituelle du Honduras; l'État et les médias devraient tout mettre en oeuvre pour favoriser la création de médias locaux et communautaires. Le Gouvernement devrait mettre sur pied à cet effet, en collaboration avec les médias et dans le respect de la liberté d'information et d'expression, une commission à

composition multiethnique, constituée de façon démocratique, chargée de lui soumettre un programme d'ensemble.

## **VI. Droits économiques et sociaux**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, para. 32 (b) et (e) à (h))

32. (b) (...) Des mesures effectives devraient être prises pour s'attaquer aux effets les plus visibles de la discrimination raciale dans les domaines de l'éducation, de la santé et du logement;

32. (e) Le Ministère hondurien du travail et de la sécurité sociale devrait appliquer la législation sur la pêche sous-marine à la langouste de manière plus ferme pour que les pêcheurs soient mieux protégés, et prendre les mesures nécessaires pour que les employeurs dédommagent les victimes de cette pêche et leurs familles; l'Organisation internationale du Travail devrait accorder plus d'attention aux droits syndicaux des pêcheurs de langoustes honduriens;

32. (f) En consultation avec les populations autochtones et garifuna, le Gouvernement devrait mettre en place une politique de développement économique et social plus cohérente et conséquente à leur intention; dans ce contexte et compte tenu de la profondeur historique et de l'incidence du racisme et de la discrimination sur les plans économique, social et culturel, le Rapporteur spécial recommande la mise en oeuvre, dans un processus démocratique et avec la participation des communautés concernées, d'un programme de discrimination positive en faveur des populations autochtones et afro-honduriennes, comme noyau central du programme d'action global contre le racisme et la discrimination raciale;

32. (g) Le Gouvernement est invité à renforcer ses relations de travail et ses consultations avec les organisations représentatives des communautés victimes de discrimination, comme l'ODECO, l'OFRANEH, la Federación de Tribus Xicaques de Yoro (FETRIXY), Mosquitia Pawisa Apiska (MOPAWI) [Agence pour le développement de la Mosquitia] et l'Asociación Miskitos Hondureños de Buzos Lisiados (AMBLI) [Association des pêcheurs plongeurs handicapés de la Mosquitia];

32. (h) Le Gouvernement hondurien devrait fournir aux populations concernées les ressources nécessaires pour qu'elles prennent elles-mêmes en charge des activités touristiques dans leurs régions, tant pour améliorer leurs conditions de vie que pour promouvoir l'authenticité et la vitalité de leur patrimoine et de leurs expressions culturelles, et éviter ainsi leur dépréciation et folklorisation;

## **VII. Droits culturels**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, para. 32 (f) et (h) à (j))

32. (f) En consultation avec les populations autochtones et garifuna, le Gouvernement devrait mettre en place une politique de développement économique et social plus cohérente et conséquente à leur intention; dans ce contexte et compte tenu de la profondeur historique et de l'incidence du racisme et de la discrimination sur les plans économique, social et culturel, le Rapporteur spécial recommande la mise en oeuvre, dans un processus démocratique et avec la participation des communautés concernées, d'un programme de discrimination positive en faveur des populations autochtones et afro-honduriennes, comme noyau central du programme d'action global contre le racisme et la discrimination raciale;



32. (h) Le Gouvernement hondurien devrait fournir aux populations concernées les ressources nécessaires pour qu'elles prennent elles-mêmes en charge des activités touristiques dans leurs régions, tant pour améliorer leurs conditions de vie que pour promouvoir l'authenticité et la vitalité de leur patrimoine et de leurs expressions culturelles, et éviter ainsi leur dépréciation et folklorisation;

32. (i) Le Gouvernement hondurien devrait accélérer la mise en place des programmes d'éducation interculturels multilingues s'adressant aux populations autochtones et garifuna, et également à l'ensemble de la population hondurienne; en effet, les communautés vivent côte à côte sans connaissance réciproque de leurs histoires, de leurs systèmes de valeurs, ni de leurs traditions spirituelles et culturelles;

32. (j) C'est dans ce contexte que doivent être examinés le rôle des médias et leur incidence sur la formation des perceptions, des images et donc des préjugés. Le Rapporteur spécial recommande que les médias adoptent un code de conduite et fassent en sorte que, tant dans leurs programmes que dans leurs structures de direction et de gestion, soit reflétée la diversité ethnique, culturelle et spirituelle du Honduras; l'État et les médias devraient tout mettre en oeuvre pour favoriser la création de médias locaux et communautaires. Le Gouvernement devrait mettre sur pied à cet effet, en collaboration avec les médias et dans le respect de la liberté d'information et d'expression, une commission à composition multiethnique, constituée de façon démocratique, chargée de lui soumettre un programme d'ensemble.

### **VIII. Situation de groupes spécifiques**

n/a

### **IX. Le droit au développement et la coopération internationale**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, para. 32)

32. Mais le Rapporteur spécial a constaté également que la carte sociale de la pauvreté et de la marginalisation et la carte géographique des communautés victimes de discrimination se superposent.

### **X. Recommandations à caractère régional**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add5, para. 33 (a) et (b))

33. (a) La lutte contre le racisme et la discrimination raciale doit tenir compte de la dimension régionale en Amérique centrale, où les sociétés partagent non seulement des similitudes démographiques et ethnoculturelles, mais surtout un héritage historique de racisme et de discrimination, amplifié par la violence politique moderne. Les pays de cette région subissent également des mouvements de populations qui souffrent, à des degrés divers, de discrimination dans les différents pays. Le Rapporteur spécial recommande en conséquence que l'Organisation des États américains (OEA), notamment la Commission interaméricaine des droits de l'homme, accorde une place centrale, dans la construction de la paix, à l'éradication en profondeur du racisme et de la discrimination raciale, en vue de la mise en place d'un multiculturalisme régional, démocratique, égalitaire et interactif. L'OEA devrait appuyer les efforts des États d'Amérique centrale par des études sur les structures identitaires multiethniques et sur les manifestations des phénomènes liés, et leur fournir une assistance pour l'élaboration de législations nationales et régionales coordonnées, le renforcement des institutions de protection

des droits de l'homme et de la société civile, ainsi que pour la révision des programmes et systèmes éducatifs et médiatiques;

33. (b) L'OEA devrait également promouvoir le développement d'un tourisme interculturel articulé autour des axes suivants: l'existence d'un patrimoine physique commun, la vitalité des pratiques et expressions culturelles et spirituelles authentiques, et leurs interactions profondes dans le temps et dans l'espace. Le tourisme interculturel peut permettre à la fois de combattre la discrimination par la réhabilitation des identités historiquement niées ou bafouées, d'éviter la folklorisation des cultures inhérente aux pratiques modernes du tourisme de masse, et de promouvoir le lien fondamental entre la terre et la culture, «terres-sources», au coeur des revendications des communautés autochtones et d'origine africaine.

## **XI. Commentaires du Gouvernement**<sup>19</sup>

n/a

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<sup>19</sup> As published as official documents of the CHR.

## ISLAMIC REPUBLIC OF IRAN

### Introduction

During the period under review, the Special Rapporteur on the human rights of migrants visited the country (please refer to document E/CN.4/2005/85/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.2, paras. 66 to 68, 71, 77 and 78)

66. The Special Rapporteur considers that it is important to acknowledge that there are a number of migrants in the Islamic Republic of Iran, most of whom are Afghans, and on this basis to proceed to the implementation of a national policy of assistance and protection for migrants. This policy must be put into effect from the human rights standpoint and reflected in concrete programmes. Measures to ensure that migrants enjoy in practice the rights to legal assistance in all administrative proceedings relating to their migration status should be considered.

67. The Special Rapporteur recommends to the Iranian authorities that they initiate and encourage more domestic research and evaluation of the presence, working conditions and impact of foreign migrant workers on the Iranian economy and society. This would help policy planners to better address issues of legal migration, to identify where foreign labour is genuinely required and, as a corollary, to determine which sectors may require protection against competition from migrant labour.

68. The Special Rapporteur recommends that the Government of the Islamic Republic of Iran sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In the meantime, the Special Rapporteur invites the Government to initiate a process of harmonizing national legislation and public policies with the Convention and amending relevant legislation where appropriate to ensure that the human rights of migrants and asylum-seekers are not jeopardized.

71. The Government of Iran should provide adequate resources, adopt policies and implement programmes to ensure the application of international human rights standards concerning the apprehension of irregular migrants, deportation, family reunion and conditions of detention; training of officials responsible for enforcing legislation on migration to ensure its conformity with international human rights standards could be envisaged.

77. Afghan associations should continue providing support, in terms of knowledge, awareness-raising and development of skills, to Afghans residing in Iran in order to strengthen family structures, prevent abuses and exploitation and facilitate reintegration.

78. The Special Rapporteur considers it important that civil society organizations should look into issues related to the human rights of migrants and initiate a dialogue with the State to protect and promote the human rights of migrants. In that regard, she considers it important that existing Afghan organizations should share their knowledge and experience and provide the Iranian authorities with advice. She encourages organizations of migrants and their families to continue to step up their advocacy for protection of their rights.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.2, para. 70)

70. The Special Rapporteur notes with concern the situation of irregular migrants in Iran in the cities, who suffer stigmatization and discrimination. In that regard, she deems it important that the State should guarantee migrants who have no papers access to basic educational and health services without discrimination.

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

## **IV. Administration of justice and the rule of law**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.2, para. 72)

72. Irregular migrants detained in Iran pending deportation should be given adequate access to courts and lawyers and their cases reviewed by competent authorities without undue delay, and steps taken to ensure that victims of trafficking are not criminalized.

## **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.2, para. 69)

69. The Special Rapporteur supports the views of Afghans with whom she met and requests the Government to extend the duration of residence permits from six months to one or two years, as was done in the past. The Special Rapporteur would also support the call she heard from migrants with whom she met to request the Iranian authorities to maintain free access to education, social and health services to all migrants.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.2, paras. 73 and 74)

73. Since the vulnerability of migrants is primarily due to their irregular situation, the Special Rapporteur considers it important for the authorities to continue to provide migration regularization programmes, with the support of civil society and Afghan associations, and ensuring that they are accompanied by extensive information campaigns.

74. The Special Rapporteur considers that the strengthening of control systems should not disproportionately affect previously existing measures, in particular those relating to family

reunification and integration of migrants who have been in Iran for several years. The Special Rapporteur is of the view that it is necessary to pay particular attention to Iranian women who have married Afghans as well as to their children. Particular attention should also be devoted to those Afghans who were born in Iran and have been living there since birth. The Government should consider providing a legal status to Afghan children born in Iran as well as to Afghans married to Iranian women as well as to their children. Measures to ensure the full and effective implementation of legislation relating to unaccompanied minors in relation to reunification and documentation should also be foreseen and implemented.

## **IX. The right to development and international cooperation**

### **Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.2, paras. 75, 76, 79 and 80)**

75. The Government should pursue its efforts, in cooperation with the Government of Afghanistan, UNHCR and IOM, to better monitor deportations from “deportation centres” and ensure adequate assistance and protection to deportees, to avoid abuses during the deportation proceedings and detention up to the moment of departure for Afghanistan; a UNHCR presence in the “deportation centres” and “detention centres” would effectively safeguard the right to asylum and the voluntary nature of repatriation.

76. The Special Rapporteur considers that frontier control per se does not ensure the orderly management of migration in accordance with international human rights standards. She appreciates the fact that the question of migration is the subject of an ongoing dialogue with the countries of origin. The focus on safe, orderly migration in decent conditions should be reflected in a dialogue, which goes beyond labour matters, with the countries of origin. In the case of Afghanistan, the Special Rapporteur acknowledges efforts by Iranian authorities to work with the Afghan authorities and considers it essential that the dialogue between the two Governments be maintained. The focus of this dialogue should be the prevention of irregular migration and co-development in the countries of origin; greater international cooperation efforts are needed to assist migrants in Iran, and those returning to Afghanistan.

79. The United Nations Country Team and other international agencies such as IOM and ILO should strengthen their support to the Government of Iran in dealing with issues related to migrants. The Special Rapporteur also considers that it is of fundamental importance to provide assistance to members of migrant families in the areas where irregular migration originates.

80. The Special Rapporteur encourages the Government of Iran to continue its policy aimed at improving the conditions of Iranians who wish to return to Iran and facilitating the return of those Iranians residing outside the country. She also notes that Iranian authorities are engaged in a dialogue with other States to conclude bilateral agreements to regulate migration abroad by its nationals and to coordinate among all relevant ministries all matters relating to migrant workers.

## **X. Comments from the Government**<sup>20</sup>

n/a

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<sup>20</sup> As published as official documents of the CHR.

## ITALY

### Introduction

During the period under review, the following special procedures visited Italy:

- The Special Rapporteur on the right to freedom of opinion and expression (please refer to document E/CN.4/2005/65/Add.5);
- The Special Rapporteur on the human rights of migrants (please refer to document E/CN.4/2005/85/Add.3).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.3, paras. 93 to 95, 102 and 103)

93. It should pay the closest attention to whether the constant changes in the Aliens Act are consistent with the relevant requirements of the human rights instruments ratified by Italy.

94. Migration policy should be based on dialogue and fleshed out by contributions from all political forces and social partners. Dialogue between institutions and with civil society (immigrants' associations, NGOs, churches, etc.) should be nurtured. The Special Rapporteur requests that the recommendations on migration submitted by CNEL, many of which she has endorsed, should be taken into account.

95. Italy should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the United Nations Convention against Transnational Organized Crime, and the Protocols supplementing it. In particular, the Special Rapporteur advises a thorough analysis of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families for a correct assessment of its provisions.

102. She proposes that the gist of the Aliens Act, labour legislation and the situation on the Italian labour market should be circulated in a clear and comprehensible form among the potential immigrant and emigrant population.

103. The adoption of the regulations for the implementation of Act No. 189/2002 should be expedited.

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/65/Add.5, paras. 70 to 72 and 78)

70. The Special Rapporteur strongly recommends that the Government revisit its legislation in order to ensure the participation of multiple actors in the television broadcasting sector. In particular, he calls upon the authorities to clarify the notion of an "integrated system of communications" as contained in Law No. 112 (the Gasparri Law) on television broadcasting in order to define precisely the market covered by the law and to allow for real antitrust control.

71. The Special Rapporteur also hopes that in organizing the transfer from analog to digital television, as initiated by the Gasparri law, all measures will be taken to ensure that the assigning of frequencies is made on the basis of criteria that are objective, transparent and non-discriminatory, with the ultimate goal of promoting diversity in this sector.

72. In view of the multiplicity of organs monitoring activities in the media sector, the Special Rapporteur encourages the authorities to enhance cooperation and coordination among these bodies.

78. The Special Rapporteur encourages the Government to consider establishing a national institution for the protection of human rights, possibly an ombudsperson, in accordance with the Paris Principles, as such an institution can play an important advisory role, benefiting the authorities and assisting the population in the protection of their human rights, notably the right to freedom of opinion and expression, in particular through an individual complaint mechanism.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.3, para. 110)

110. The Special Rapporteur observed that discrimination against migrants was not addressed directly either in political spheres or by civil society. She therefore urges the Inter-Ministerial Committee on Human Rights to supplement its work on the national action plan by implementing the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban.

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.3, paras. 106, 107, 109 and 114)

106. Alternatives to deprivation of liberty, agreements allowing sentences to be served in countries of origin and opportunities for rehabilitation by means of existing vocational training workshops should be developed for foreign prisoners. The relationship between discrimination against immigrants in access to employment and the high percentage of foreigners imprisoned for minor offences requires analysis.

107. Better coordination is required between the Ministry of the Interior and the prison authorities over the deportation of foreign prisoners. Holding ex-convicts in the CPTAs implies an unjustified extension of their sentences and creates problems of personal safety for everyone else held there, particularly women.

109. Official interpreters should be available inside prisons.

114. The possibility should be studied of extending the article 18 programmes to male and female victims of trafficking in persons who have been subjected to forced labour, slavery or similar practices, bondage or organ removal. Foreigners in prison or in CPTAs should be ensured access to these programmes.

## **IV. Administration of justice and the rule of law**

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.3, para. 104)

104. Means of combating illegal migration should be reinforced, and efforts and resources increased to prosecute the hiring of illegal migrants.

## **V. Fundamental freedoms**

### Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.3, para. 108)

108. The right of asylum act should be adopted and the National Commission for the right of asylum should function more swiftly in order to prevent asylum-seekers from slipping into situations of illegality.

### Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/65/Add.5, paras. 67 to 69, 73 to 76 and 79)

67. The Special Rapporteur wishes to emphasize that the protection of the right to freedom of opinion and expression is at the heart of the promotion and protection of human rights. In this respect, he recalls Commission on Human Rights resolution 2003/42, which states that “the effective promotion and protection of the human rights of persons who exercise the right to freedom of opinion and expression are of fundamental importance to the safeguarding of human dignity” and “that restrictions on the exercise of the right to freedom of opinion and expression could indicate a deterioration in the protection, respect for and enjoyment of other human rights and freedoms”.

68. The Special Rapporteur believes that Italy has a strong tradition of freedom of opinion and expression. However, he also notes a clear need for the Government of Italy to review certain aspects of its policy and to create an environment of professionalism and independence in the media sector. In this context, and wishing to pursue the constructive dialogue with the authorities begun during his visit, the Special Rapporteur would like to submit the following recommendations.

69. With a view to alleviating certain tensions perceived during his mission, the Special Rapporteur encourages the Government to clearly articulate its commitment to taking adequate measures to ensure the full enjoyment of the right to freedom of opinion and expression and to deploy the necessary efforts to work closely with civil society, in all its diversity, to address contentious issues.

73. The Special Rapporteur encourages the authorities to take the necessary measures to depoliticize the media sector, in particular regarding the management of the public television and the allocation of subsidies to the print media.

74. The Special Rapporteur strongly recommends that the issue of conflict of interest, in particular concerning the President of the Council of Ministers, be further analysed, in consultation with all concerned actors, in order to find a sustainable solution whereby influence by the political sector in the media would be significantly reduced.

75. The Special Rapporteur wishes to remind the Government that the protection of the activity of journalism from any undue pressure is a key element in a democracy. He therefore recommends that government officials refrain from making statements that might affect the independence of journalists and other media professionals. He urges the Government to take all necessary steps to prevent the dismissal and/or sidelining of journalists on the basis of the expression of critical opinions. In those cases that have already occurred, the Special Rapporteur requests the Government to take appropriate measures for the reinstatement or re-employment of the persons concerned.



76. The Special Rapporteur, while welcoming the adoption of the new legislation on the decriminalization of defamation, wishes to draw the attention of media personalities to article 19 of the International Covenant on Civil and Political Rights which states that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, in particular regarding the respect of the rights and reputations of others.

79. The Special Rapporteur reiterates his wish to pursue the dialogue with the Government of Italy and to assist the authorities in their efforts to improve the protection and promotion of the right to freedom of opinion and expression..

## **VI. Economic and social rights**

### **Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.3, paras. 96 to 101, 105, 111 to 113 and 115)**

96. The system of preferential quotas could be supplemented by development cooperation programmes. Information channels to consulates should also be improved.

97. Linking migration to employment also means bringing migration policy into line with the employment situation. The Special Rapporteur therefore proposes an annual programming of quotas to match demand on the Italian labour market, involving the regions and social forces in the reception extended to workers. Legal means of migration need to be promoted, and the provisional nature of decrees on maximum quotas and the restrictions on nationals from 8 out of the 10 new members of the European Union need to end. The requirements of the labour market should also be borne in mind in establishing the duration of residence permits.

98. Urgent steps should be taken to expedite the issuance and renewal of residence permits within the legal deadlines. The possibility of devolving this task upon local authorities and using information technology for accessing files should be considered.

99. The Special Rapporteur proposes the introduction of visas for people seeking work in sectors dominated by small companies and individual employers, such as domestic work, care of the elderly and sick, or the hotel trade.

100. She also proposes some flexibility in the regulation of the residence contract for employment purposes. More stable legal residence for immigrant workers would encourage them and their families to integrate.

101. She proposes action to rectify segmentation by country of origin in the labour market, the high incidence of work-related accidents and the lack of professional mobility among the immigrant community, and to recognize or accept the equivalence of academic qualifications.

105. Urgent steps should be taken to ensure health assistance for mass arrivals in Lampedusa. The priority of the Lampedusa CPTA should be the correct identification of everyone arriving on the island, not the immediate deportation of newly-arrived immigrants. The Special Rapporteur welcomes the new agreement between the Ministry of the Interior and MSF and hopes that MSF will be able to resume its activities in the CPTAs and the identification centres in the near future.

111. Action is needed in response to the demand for rented accommodation affordable by lower-income immigrants. Support for local and regional bodies' efforts to solve the accommodation problem is needed.

112. Programmes should be adopted for training Italian language teachers for the classroom. The presence of well-trained cultural mediators in schools is essential, particularly in relations between school and family.

113. The right of undocumented immigrants to health care with no kind of discretionary latitude must be effectively implemented. A trans-cultural approach that takes account of the social and cultural roots of immigrant patients seeking primary care, particularly paediatric and reproductive health services, should be introduced. Measures should be considered for reducing abortion rates and the incidence of HIV/AIDS and other sexually transmitted diseases.

115. Voluntary (i.e. not forcible) return programmes should be developed for immigrants.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/65/Add.5, para. 77)

77. The Special Rapporteur encourages the authorities to pursue and strengthen their policy regarding access to comprehensive information for the migrant populations. The authorities should also ensure that migrants have the possibility to express themselves freely and that they are able to participate in public life. Such policies should be developed in close cooperation with civil society and with a view to promoting the full integration of the groups concerned, based on the principles of mutual respect and non-discrimination.

## **IX. The right to development and international cooperation**

n/a

## **X. Comments from the Government** <sup>21</sup>

Observations of the Government of Italy on the Report of Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants, on her mission to Italy (E/CN.4/2005/G/19)

## **CONSIDERATIONS GENERALES**

Le Gouvernement italien souhaite remercier le Rapporteur Spécial des expressions d'appréciation pour les efforts significatifs réalisés dans le domaine des migrations, et notamment pour ce qui a trait aux activités complexes de secours en mer, accomplies quotidiennement par nos unités de la police et de la Marine, et qui ont permis de sauver des milliers de vies humaines.

Le Gouvernement italien a également pris note avec satisfaction de l'appréciation manifestée par le Rapporteur Spécial à l'égard des aspects suivants : législation nationale en vigueur en matière de protection des victimes de la traite ; action lancée au niveau international afin d'établir un dialogue avec les pays d'origine et de transit des migrants ; dispositions qui ont récemment

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<sup>21</sup> As published as official documents of the CHR.

permis de régulariser un grand nombre de ressortissants étrangers. Il convient de préciser sur ce dernier point qu'il s'est agi d'une mesure ad hoc, non renouvelable à l'avenir.

Le Gouvernement italien remercie également le Rapporteur Spécial d'avoir signalé un certain nombre de questions, dont il a pris note, qui à son avis présentent des aspects critiques. Le Gouvernement italien souhaite toutefois faire une remarque à caractère général, qu'il estime indispensable en vue d'avoir une perception et une évaluation correctes de la réalité italienne. L'Italie, qui était un Pays de forte émigration, est devenue en l'espace de quelques années, un pays d'immigration. Confrontée à un phénomène nouveau, qui ne cesse de se développer et qui soulève des questions extrêmement complexes, à partir de 1990 l'Italie s'est dotée d'une législation spécifique en matière d'immigration, qui a été modifiée à la fin de la décennie et, finalement, en 2002.

Il s'agit d'une législation avancée, particulièrement attentive aux aspects de l'intégration et de l'accueil, qui accorde la pleine protection aux droits des migrants, y compris ceux qui travaillent en Italie, qui bénéficient des mêmes conditions prévues pour les citoyens italiens. Cette législation a également mis l'accent sur les activités de prévention et de lutte contre le phénomène croissant de l'immigration clandestine, en vue de contrecarrer les organisations criminelles qui tirent profit des trafics illicites et de l'exploitation des migrants. Le Gouvernement italien ne partage donc pas les observations du Rapporteur Spécial au sujet de la Loi 189/2002 et ne saurait accepter les affirmations – qui ne reposent d'ailleurs sur aucune motivation – selon lesquelles ces dispositions « entraîneraient de sévères restrictions aux droits des migrants (point 79) » ou qu'elles « pourraient ne pas satisfaire aux normes internationales en matière de protection des droits de l'homme » (point 93).

Dans ce cadre, le Gouvernement italien tient à souligner que la loi 189/2002 a, au contraire, placé l'emploi au coeur du système migratoire, l'entrée et la permanence des étrangers en Italie étant autorisées dans le cadre d'une activité de travail. L'objectif est donc d'intégrer les étrangers au monde du travail et à la société italienne. Le Gouvernement italien tient en outre à ajouter que c'est justement la pleine application de la Loi 189/2002, avec l'entrée en vigueur des règlements y afférents, qui permet de résoudre un certain nombre de problèmes signalés par le Rapporteur Spécial.

## **CONSIDERATIONS SPECIFIQUES**

### point 12

Le Règlement d'application de la loi 189/2002 a été approuvé et est entré en vigueur le 25 février 2005 (D.P.R. 334 du 18 octobre 2004). La Loi 271 date du 12 novembre 2004. Celle-ci apporte des modifications législatives, visant à modifier la formulation des articles 13 et 14 du T.U. en exécution des jugements d'illégitimité constitutionnelle n° 222 et n° 223 de juillet 2004.

### point 23

Le Rapport cite l'expulsion des étrangers surpris dans les aéroports avec des faux papiers, alors que dans ce cas on prévoit le refoulement, qui aux termes de l'art. 2, alinéa 7 du T.U. sur l'immigration n'entraîne aucune obligation d'informer les autorités consulaires du pays d'origine de l'étranger.

### point 26

Le Décret du Président du Conseil du 16 octobre 2004 a autorisé l'entrée de 16 000 travailleurs supplémentaires provenant des 8 pays de nouvelle adhésion.

point 27

A la ligne 7, il convient de préciser que l'employeur ne demande pas de visa, mais un permis de travail.

point 34

A la première ligne, il convient d'utiliser la phrase "en séjour irrégulier dans le territoire national" plutôt que "dans une situation administrative irrégulière".

point 36

Quant aux remarques attribuées aux syndicats et aux ONG, il faut préciser que la flexibilité des rapports de travail ne doit pas être interprétée comme une précarisation accrue de l'emploi ou une réduction des protections prévues pour les travailleurs. Il apparaît donc imprécis de mentionner les difficultés rencontrées par les travailleurs migrants pour garder un rapport de travail stable comme étant le produit de la réforme du marché du travail.

point 38

En matière de délais de délivrance et renouvellement des permis de séjour, des solutions opérationnelles sont à l'étude en vue de réduire les délais de cette procédure.

point 42

Il convient de préciser que l'accès aux Universités italiennes est assuré à tous les étrangers résidant à l'étranger, titulaires du certificat d'études prévu et disposant des moyens nécessaires à pourvoir à leur entretien, aux conditions fixées à échéance annuelle par le Ministère de l'éducation, de l'université et de la recherche et par le Ministère des affaires étrangères. L'accès aux Universités est assuré aux mêmes conditions que celles prévues pour les citoyens italiens aux étrangers qui sont déjà en Italie:

- a) Pour des raisons de travail subordonné, indépendant, raisons familiales, religieuses, asile politique et protection humanitaire;
- b) Aux étrangers qui sont en Italie depuis au moins un an et qui sont titulaires du titre d'études secondaires obtenu en Italie;
- c) Ainsi qu'aux étrangers, indépendamment de leur résidence, titulaires de titres d'études secondaires délivrés par des écoles italiennes à l'étranger ou des écoles étrangères en Italie.

point 46

Au point *b*), il convient de préciser que les enfants âgés de moins de 18 ans (ainsi que le conjoint) sont automatiquement considérés "pris en charge" par l'auteur de la demande de regroupement familial.

point 47

Le terme "détention" utilisé dans le titre du chapitre "D" est inapte à définir correctement les cas d'espèce, différents, décrits aux points suivants (47 – 65).

point 53

Quant aux remarques formulées par le Rapporteur sur l'absence de ressortissants extra-communautaires dans le Centre de Lampedusa au moment de sa visite, il convient de préciser que cette structure est chargée de prêter des "activités de premier secours et d'assistance" (art.23 du DPR 394/1994) aux ressortissants extra-communautaires qui débarquent sur l'île et qu'elle est donc pleinement opérationnelle uniquement dans les quelques heures qui passent du moment de l'arrivée des clandestins sur l'île au moment de leur transfert, par mer ou par avion, vers d'autres centres, en Sicile ou sur le continent. Il est évident que ces activités de secours immédiat et de tri visent à éviter des situations de surpeuplement pour les utilisateurs de cette structure, qui

entraîneraient un malaise évident pour les individus, et à assurer aux habitants de Lampedusa un déroulement régulier de leurs activités quotidiennes.

point 54

Pour ce qui est des critiques formulées par le Rapport au sujet de l'emplacement de l'actuel CPT de Lampeduse, le Département compétent du Ministère de l'intérieur s'est employé avec détermination pour repérer un nouveau siège pour le Centre, étant pleinement conscient des difficultés logistiques du siège actuel. Cette activité, effectuée dans le respect des prérogatives des Autorités locales, s'est toutefois heurtée dans ce cas, comme d'ailleurs dans d'autres situations analogues, à d'importantes difficultés de nature sociale et politique, qui ont aussi empêché la réalisation d'un nouveau centre à Poggio Monaco, malgré le fait qu'un contrat avait été conclu avec la société adjudicataire qui avait déjà entamé les travaux de préparation des structures manufacturées. A ce stade, les procédures administratives avec le Ministère de la défense entrent dans la phase finale pour l'acquisition de la zone où siège la caserne de l'Armée « Adorno », afin d'y réaliser une structure plus appropriée du point de vue logistique et avec une capacité d'accueil supérieure, la structure actuelle étant destinée à être abandonnée.

point 57

En ce qui concerne le thème de la reconduite de la convention avec l'association « Médecins sans frontières » pour l'assistance sanitaire dans le Centre de Lampeduse, il convient de préciser que la convention stipulée entre la Préfecture de Agrigento, compétente au niveau territorial, et la Confrérie des Miséricordes d'Italie pour la gestion du Centre de Lampeduse prévoit déjà le service d'assistance sanitaire fourni aux utilisateurs du centre effectué par des professionnels et par le biais d'équipements médicaux appropriés. Toutefois, en vue d'assurer une assistance sanitaire plus efficace aux clandestins qui débarquent sur les côtes siciliennes, le Département compétent du Ministère de l'intérieur a encouragé la conclusion d'un protocole d'entente entre le Préfet de Agrigento, la Confrérie des Miséricordes d'Italie et l'Association « Médecins sans Frontières », afin de coordonner de manière efficace et synergique les secours sanitaires prêtés dans la phase critique des débarquements sur la terre ferme.

point 60

Pour ce qui est de la création des Centres d'identification, le Règlement d'application a été publié et les procédures d'activation de ces structures sont en cours. Il convient de préciser que le règlement prévoit, pour la mise en place des centres, l'adoption d'un décret du Ministre de l'intérieur, qui fait suite à l'acquisition de l'avis de la Région concernée et de la Conférence unifiée Etat-Régions-Communes. La référence dans le Rapport au centre de "Salinagrande" est probablement le fruit d'un malentendu terminologique. La structure de Trapani est un centre d'assistance et de secours créé aux termes de la loi 563/1995, qui autorise le Ministère de l'intérieur à prêter l'assistance aux étrangers en situation précaire qui ont atteint le pays, ou qui ont été identifiés dans le territoire national en position irrégulière, « le temps strictement nécessaire à leur expulsion ou identification ». Ceci explique donc le contenu du point 61 successif pour ce qui est de la présence dans cette structure d'immigrés irréguliers et de demandeurs d'asile.

point 66

L'autorisation est accordée pour des raisons de protection sociale et compte tenu également de l'importance de la collaboration prêtée par l'étranger pour lutter contre l'organisation criminelle et pour identifier ou appréhender les responsables.

point 72

L'examen des demandes d'asile relève actuellement de la "Commission Centrale pour la reconnaissance du statut de réfugié". La Loi 189/2002 confie cette tâche aux Commissions territoriales, alors que la Commission Nationale pour le Droit d'Asile est responsable principalement des fonctions de coordination et d'orientation. Un représentant du Haut Commissariat des Nations Unies pour les Réfugiés participe à titre de membre à part entière, avec droit de vote, aux travaux des Commissions territoriales. La réforme vise également à accélérer les procédures d'examen et de décision des demandes de reconnaissance du statut de réfugié, aux termes de la Convention de Genève. Ce système entrera en fonction à partir du 21 avril 2005. La recommandation adressée à la préfecture de police en vue de l'octroi de ladite protection humanitaire est indépendante du dépôt d'un recours contre une décision négative sur l'attribution du statut de réfugié.

point 78

Ce point semble contredire le contenu du point 76. Ce dernier indique correctement que le mineur non accompagné, italien ou étranger, est soumis à la protection établie par le Tribunal des Mineurs et à l'assistance des administrations locales. Le point 78 cite les mineurs non accompagnés demandeurs d'asile, dont la demande a été refusée, présents dans les bâtiments de la gare Tiburtina. A cet égard il convient de préciser que les mineurs non accompagnés, même dans le cas de demandeurs d'asile dont la demande ait été refusée, ne peuvent pas être expulsés et restent soumis à la discipline spéciale dont au point 76. (assistance par la collectivité locale). La situation décrite au point 78 concerne probablement des mineurs qui auraient quitté de manière abusive les structures dans lesquelles ils étaient assistés suite à une disposition du Tribunal des mineurs.

## **CONSIDERATIONS SUR LES CONCLUSIONS ET LES RECOMMANDATIONS**

point 79

Il est fait renvoi aux considérations générales ci-dessus.

point 80

Nous ne saurions partager l'affirmation qui reconnaît dans l'économie souterraine la cause principale de l'immigration irrégulière, en attribuant ainsi la responsabilité de ce phénomène au pays de destination. A cet égard, il convient de signaler qu'au cours des dernières années le Gouvernement italien a lancé une ferme politique de lutte contre le travail au noir. La régularisation prévue par la loi 189/2002 avait comme objectif de faire sortir les travailleurs étrangers des situations d'irrégularité. Il convient d'ajouter que la réforme des inspections du travail visées par le Décret législatif du 23 avril 2004, n° 124, a réorganisé et renforcé l'activité de vigilance, en mettant l'accent notamment sur les initiatives de lutte contre le travail irrégulier. Une Commission Centrale de coordination est chargée d'identifier les orientations et les objectifs stratégiques, ainsi que les priorités des interventions d'inspection de tous les organes engagés dans le territoire dans les actions de lutte contre le travail clandestin. En particulier, le Ministère du travail et des politiques sociales, à côté de l'activité ordinaire menée par ses bureaux au niveau territorial avec d'autres institutions et entités compétentes en la matière, a récemment créé une direction Générale spéciale avec des fonctions de coordination des activités d'inspection dans l'ensemble du territoire national. Dans ce cadre, il est prévu de créer un groupe d'experts du Ministère du Travail, de l'Inps, de l'Inail, qui agiront sur le territoire national avec un critère opérationnel unique dans le cadre de l'action de prévention et de promotion du respect des dispositions de la législation sociale et du travail. Il convient en outre de souligner que les caractéristiques et la taille du phénomène migratoire en Italie sont profondément influencées, et le Rapport en fait état, par la position géographique, qui expose le pays aux flux provenant de

l'ensemble du bassin de la Méditerranée, ainsi que par son appartenance à l'Union européenne et à l'espace de Schengen.

point 81

Nous prenons note avec satisfaction de l'appréciation exprimée par le Rapporteur Spécial à l'égard des efforts réalisés par le Gouvernement italien pour resserrer les liens avec les pays d'origine et de transit des flux migratoires. A cet égard, il convient de préciser ce qui suit. D'une part, le grand nombre d'accords bilatéraux de réadmission (29) conclus par l'Italie permettent de procéder au rapatriement des étrangers surpris dans le territoire en situation irrégulière sur la base des ententes avec les pays d'origine. De l'autre, les accords bilatéraux en matière d'emploi, conclus ou en cours de négociation, avec différents pays d'origine des flux migratoires (Moldavie, Roumanie, Maroc, Egypte), ainsi que les projets pilote de sélection et formation à l'étranger promus par le Ministère du Travail (Tunisie, Sri Lanka, Moldavie), poursuivent l'objectif d'entamer des pratiques de collaboration avec les autorités des pays d'origine, susceptibles d'expérimenter des mécanismes de rencontre de l'offre et de la demande d'emploi, d'améliorer la connaissance réciproque des besoins et des profils professionnels disponibles, de renforcer les voies légales d'accès en Italie. La collaboration avec les pays d'origine des flux migratoires constitue un outil fondamental aussi bien en vue de qualifier et adapter aux exigences du marché du travail italien la main d'œuvre étrangère prête à émigrer que pour lutter contre l'immigration irrégulière.

point 82

Comme déjà signalé auparavant, des solutions opérationnelles sont à l'étude pour réduire les délais de la procédure de délivrance et de renouvellement des permis de séjour.

point 83

Les considérations faites au sujet du point 36 s'appliquent également à l'affirmation selon laquelle il manquerait « la coordination entre les politiques de l'emploi qui visent à réduire les contrats à temps indéterminé et la politique actuelle en matière de travailleurs migrants, qui demande au travailleur de prouver qu'il exerce une activité de travail stable ». La flexibilité des rapports de travail ne doit pas être confondue avec une plus grande précarité de ceux-ci ni avec une diminution de la protection prévue pour les travailleurs. Il apparaît donc inopportun de citer les difficultés rencontrées par les travailleurs migrants pour établir ou maintenir un rapport de travail stable suite à la réforme du marché du travail. La plupart des travailleurs étrangers présents en Italie travaillent comme employés de maison ou assistants personnels, ou trouvent un emploi dans les secteurs de l'industrie, du tourisme, de l'agriculture, du bâtiment. Dans ces secteurs, l'entrée dans le marché du travail italien se fait sur la base d'un contrat à temps déterminé ou indéterminé, conclu aux termes de la loi et de la convention collective de référence, la même qui s'applique aux travailleurs italiens ; les différentes typologies de travail flexible et occasionnel prévues par la récente législation en matière de marché du travail ne sont donc pas très fréquentes dans les principaux secteurs d'emploi des étrangers ; celles-ci visent d'ailleurs à assurer et promouvoir un emploi régulier et non précaire et à fournir les protections effectives pour accroître rapidement le nombre de personnes qui travaillent régulièrement. Parmi les nouvelles formes et typologies de rapports de travail, avec les garanties prévues par la loi, quelques unes peuvent s'adapter à la réalité des travailleurs migrants et pourraient réduire la marge d'incertitude liée à l'emploi stable et au renouvellement du permis de séjour. A cet égard, il convient de mentionner le travail occasionnel et accessoire, visé par les articles 70 à 74 du décret législatif 276/2003, qui s'applique précisément, entre autre, aux travailleurs extra-communautaires titulaires d'un permis de séjour régulier, dans les six mois qui suivent la perte d'un emploi pour :

- petits travaux ménagers de nature extraordinaire, y compris l'assistance au domicile des enfants et des personnes âgées, malades ou handicapées

- enseignement privé supplémentaire
- petits travaux de jardinage, nettoyage et entretien de bâtiments et de monuments
- réalisation de manifestations sociales, sportives, culturelles et charitables
- collaboration avec des organismes publics et des associations de bénévolat pour la réalisation d'actions de solidarité ou d'urgence, dans le cadre par exemple de calamités ou d'événements naturels imprévus.

points 84 et 85

Il est fait renvoi aux considérations générales ci-dessus

point 86

Pour ce qui est des remarques formulées dans le Rapport sur la nature privée de la gestion des Centres d'accueil temporaire, il convient de préciser que le recours aux négociations privées pour la conclusion des conventions avec les Entités chargées de la gestion des Centres d'accueil temporaire est expressément prévu par les Ordonnances de Protection Civile relatives aux dispositions adoptées pour lutter contre l'urgence de l'immigration étrangère en Italie. Le Département du Ministère de l'intérieur compétent en la matière a en outre élaboré des « Lignes Directrices » spéciales, approuvées par une Directive du Ministre le 8 janvier 2003, qui énoncent les critères et les principes de gestion incontournables qui doivent être appliqués par toutes les structures situées dans le territoire italien destinées à garder ou accueillir les ressortissants extra-communautaires. Cette législation poursuit l'objectif d'assurer la plus grande transparence et objectivité dans l'attribution des fonctions de gestion aux Organismes, Onlus, Associations qui font état de qualités professionnelles affirmées, d'une vocation statutaire et d'une expérience dans le domaine de l'assistance sociale aux sujets les plus démunis. L'adoption de ces lignes permet, en outre, d'identifier des paramètres homogènes pour l'ensemble du territoire national, pouvant être vérifiés de manière objective, applicables aux services prêtés aux étrangers, en vue d'uniformiser vers le haut la qualité des prestations fournies. Quant à l'affirmation contenue dans le Rapport selon laquelle les Centres d'accueil temporaire ne sont pas fonctionnels aux politiques de lutte contre l'immigration clandestine, il convient de préciser ce qui suit. Ces structures ont été prévues par l'article 14 du T.U. n° 286/98 des lois sur l'immigration, modifié par l'art. 13 de la loi n° 189/2002, avec l'objectif spécifique de retenir le sujet frappé par une mesure d'expulsion, jusqu'à l'accomplissement des formalités bureaucratiques et à la vérification de sa position juridique, dans une structure spéciale, dans le respect de tous les droits fondamentaux de la personne (à l'exception, naturellement, du droit de sortir) en empêchant toutefois qu'il circule, comme par le passé, dans le territoire national, avec de graves dangers pour l'ordre et la sécurité publique. Cet outil législatif a été en outre jugé conforme aux dispositions constitutionnelles de la Cour Suprême avec le jugement n° 105 de 2001 et il a été implicitement réaffirmé dans les récents jugements n° 222 et 223 du 15 juillet 2004.

point 87

Il est fait renvoi aux considérations du point 54 pour ce qui est du Centre de Lampeduse.

point 88

Pour les délais de la procédure de traitement des demandes de reconnaissance du statut de réfugié, il est fait renvoi aux considérations du point 72.

point 90

Il est fait renvoi aux considérations générales ci-dessus.

point 93

Il est fait renvoi aux considérations générales ci-dessus.



point 97

L'aboutissement du cadre réglementaire de la loi 189/2002, avec l'approbation du règlement d'application y afférent, permettra, outre la mise en place effective de plusieurs instituts prévus par la loi dont le droit de préemption lié à la formation à l'étranger cité au point 32 du Rapport, le passage à la programmation ordinaire des quotas d'entrée pour des raisons de travail. Il convient toutefois de souligner que la nature transitoire de la programmation des dernières années ne veut pas dire qu'on n'ait pas pris en compte les données relatives aux besoins du marché du travail. Pour l'année 2005, deux décrets du Président du Conseil des ministres ont autorisé l'entrée de 79 500 ressortissants extra-communautaires et de 79 500 ressortissants des pays de nouvelle adhésion.

point 103

Le règlement d'application de la loi 189/2002 a été publié au Journal Officiel du 10 février 2005 et est entré en vigueur le 25 février 2005.

point 106

Pour ce qui est des remarques sur l'accès limité aux mesures alternatives à la prison (semi-liberté et période de garde), il convient de préciser que ceci est dû au fait que la plupart des détenus extra-communautaires sont des immigrés irréguliers. Cette situation empêche en effet la Magistrature de surveillance d'octroyer ces bénéfices puisque ces étrangers ne satisfont pas à l'une ou plusieurs des conditions prévues par la loi (par exemple, absence d'un domicile ou d'un contrat de travail). Au contraire, les différentes possibilités offertes par le système pénitentiaire italien (classes scolaires et professionnelles, par exemple), ne sont ni interdites ni limitées dans le cas des détenus étrangers.

point 108

Une loi sur le droit d'asile est à l'étude du Parlement. Le thème des délais de traitement des demandes a été abordé aux points 72 et 88.

point 112

Conformément au document programmatique relatif à la politique de l'immigration, qui prévoit le recours au médiateur culturel en vue d'abattre les barrières qui empêchent les immigrés de bénéficier des services, le Ministère du travail et des politiques sociales a lancé, au cours des dernières années, plusieurs initiatives en matière de médiation culturelle, et notamment la promotion de projets de médiation linguistique et culturelle dans les milieux scolaire et socio-sanitaire, auprès des bureaux de la Sûreté Publique et comme support des fonctions des Directions Provinciales du Travail.

Observations of the Government of Italy on the Report of Mr. Ambeyi Ligabo, Special Rapporteur on the right to freedom of opinion and expression, on his mission to Italy (E/CN.4/2005/G/20)

The Government of Italy thanks the Special Rapporteur and avails itself of this opportunity to renew to the Special Rapporteur its full cooperation and assistance in the accomplishment of his mandate. The Government of Italy wishes also to provide clarifications and make the following comments on some of the issues raised in the report.

## **LAW 112 OF 3 MAY 2004 ORGANISATION OF THE BROADCASTING SYSTEM**

The aim of the law is to achieve a comprehensive reform of the provisions governing the broadcasting system, taking into account the considerations in this regard made by the President of the Republic in his message to the Chamber of Deputies on 23 July 2002, in which he underscored the need for a system-level law inspired by the Constitutional value of pluralism in communications media, by the new division of legislative competencies following the reform of Article 117 of the Constitution, by the development of competition with due respect for the new EU legislation in this area, and by the technological innovations driven by the advent of digital technology. The law also answers to the necessity to bring the rules governing RAI Radiotelevisione S.p.A. (the State Broadcasting Company) into line with the Additional Protocol to the Treaty of Amsterdam and the Communication on the subject of state aid and to provide for the gradual privatisation of RAI. The reform starts with the process of convergence among communications media (radio and television broadcasting, publishing, Internet), promoting the formation of an integrated communications system.

The possibility of using TV sets for interactive services and the opportunity for integrating editorial content in the press with video programmes open up new prospects for the development of the market. In this wider multimedia context the division of the communications market into limited segments, each with an anti-competitive ceiling on audience share, no longer appears to be compatible with the strong impetus exerted by new technologies, which is encouraging companies to seek cross-fertilisation and synergies. The new limit of 20% needs to be applied to the integrated communications system, thereby fostering the growth of all the companies concerned without involving any risk for the weakest, with a view to achieving the responsible and balanced development of competition. It is in this vein that the provision preventing the owners of more than one national TV network to acquire stakes in newspaper publishing companies until 31 December 2010 should be interpreted. The principles regarding the protection of competition remain firm, however, and in particular the ban on attaining a dominant position in each component market of the integrated communications system. The 20% limit on the transmission of programmes by any one content provider remains unchanged. Cross-ownership arrangements between the television and publishing sectors provide an opportunity for the development of companies and, indeed, the entire sector. Another pillar of the law is the great boost it provides to the digital system.

The growth in the number of channels as a result of new digital technology enables the access of new voices to information and a fuller and more complete affirmation of the value of pluralism. The reform maps out the path through which all transmissions must be converted to digital technology – known as the switch-off, which under Law 66/2001 has to take place no later than 31 December 2006 – and establishes a clearly defined start-up period during which all broadcasters can implement this programme gradually. During this phase, it is natural that the antitrust limit should be related to the new number of analog and digital programmes, as an obvious consequence of the increase in the number of channels on offer and of effective pluralism. The launch of digital radio also receives its due share of attention, through a special provision that maps out the lines for its development. The law also addresses the important issue of children. The interests of children in television programming are finally being given their due share of attention. The rules contained in the self-regulatory code signed on 29 November 2002 have been placed on a legislative footing. These are important rules whose scope ranges from provisions governing programming during protected and family viewing times to rules on advertising. Any breach of these rules entails heavy penalties, foremost among which is the requirement for the broadcaster responsible to publicise the penalties incurred in a variety of ways, including in news programmes broadcast at peak or prime viewing times. Regulation of the

employment of children under 14 years in television programmes (and the ban on their use in advertising messages and spots) is to be covered by specific rules. With respect to local broadcasters, specific rules enable them to expand by extending their broadcasting area (six service areas, not necessarily adjacent) and to increase their resources by raising the ceilings on advertising.

Taking into consideration the new Title V of the Constitution, the reform assigns new powers to the Regions and Autonomous Provinces in terms of local broadcasting and establishes the general principles to be observed in the exercise of concurrent legislative powers. In this respect the law delegates to the Government the task of drawing up a consolidated text that merely brings together and provides an overview of these principles and the other provisions governing radio broadcasting.

Finally, the reform law also lays down rules concerning RAI. It envisages the privatisation of the corporation along the lines of the tried and tested public company framework, with a broad shareholder base. The privatization process is entrusted to the Interministerial Committee for Economic Planning (CIPE), which within four months of the date of completion of the merger of RAI and RAI Holding – that took place on 17 November 2004- should establish the timetable, stages and the percentage to be divested. The administration and management of the company is entrusted to a nine-member Board of Directors who, until such time as 10% of the capital of RAI has been divested, will be selected as follows: seven will be elected by the Parliamentary Supervisory Committee on a one person, one vote basis, and two, including the Chairman, will be appointed by the Minister for Economic Affairs and Finance. The Chairman must obtain the approval of two-thirds of the Supervisory Committee.

The privatisation will also allow private shareholders to choose one or more members of the Board of Directors and therefore it will facilitate depoliticizing RAI. A key feature of the law is the introduction of a requirement for the separation of accounts, as required by the Additional Protocol to the Treaty of Amsterdam. This will ensure transparency in the use of public funds and advertising revenues by the public service licensee.

With reference to the draft report on freedom of expression in Italy by the United Nations Special Rapporteur, Ambeyi Ligabo, we wish to make the following remarks:

Regarding the Special Rapporteur's comments on antitrust restrictions, we wish to point out that sections 14 and 15 of law 112/04 laid down a number of provisions setting ceilings designed to guarantee pluralism in the media:

- a 20% ceiling on the number of television and radio programmes that can be broadcast on terrestrial frequencies nationwide using the networks provided by the national radio and television digital frequency allocation plan. Although the number of networks for which the plan provides is considerably larger than those under the analog frequency allocation plan (considering that digital technology is capable of multiplying channels up to sixfold) it is not unlimited. Contrary to the doubts raised in the report, the limit is based on criteria of certainty and on the reasonableness of the antitrust ceiling to give access to a large number of new operators.
- A 20% ceiling on revenues from the integrated communications system covering all the leading economic sectors in the mass media field. This ceiling is the result of the phenomenon of media convergence. There are precedents for this in both law 223/90 (section 15(c)) and law 249/97 (section 2(1), which lay down similar restrictions. The SIC is therefore a natural development, commensurate with the degree of technological innovation introduced in the meantime, of the concept of the media market to include all the various forms of expression and communication (dailies and periodicals, radio, television, advertising, the cinema, the Internet).

The growth potential of medium-sized companies is, however, much more pronounced (considering the presumed amount of SIC of EUR25 million, according to sectoral study data, still to be confirmed by the Communications Regulatory Authority) in the case of small companies than for large companies, which are now very close to the ceiling. Furthermore, the prohibition on national television operators owning more than one network from acquiring equity interests in daily newspaper publishing companies until 31.1.2010 is intended to foster competition in favour of publishers rather than large broadcasters.

- The ban on creating a dominant position on individual markets making up the SIC. This prohibition ranges far beyond the statutory limits laid down in Italian competition law (which prohibits abuse of a dominant position and acquisitions and mergers, or anti-competitive agreements) in that it is designed to provide a further guarantee for protecting pluralism. The power of control is vested in the Authority which also identifies the individual relevant markets. In resolution 136/05/CONS, the Communications Regulatory Authority recently adopted seven measures to foster competition on the digital terrestrial market, mainly based on the obligation to invest in expanding the network, the obligation to provide independent third-party programme content suppliers with 40% of available frequencies in order to give low-cost television market access to new broadcasters, and the obligation on Publitalia to act according to the principles of transparency and non-discrimination on the publicity market. We therefore consider that the real scope of the restrictions as illustrated should dispel any doubts set out in the report. As far as the governance of RAI is concerned, we believe that the privatization of the corporation, enabling directors appointed by the private shareholders to serve on the Board, and the new procedures for electing Directors to ensure that the opposition parties are properly represented, with an impartial chairman elected with a two-thirds majority vote in favour on Parliamentary Oversight Commission, has certainly helped to gradually distance RAI from politics, which is a long-standing phenomenon and something that is certainly not encouraged by the present government. With regard to the Santoro and Biagi cases, we would point out that until Santoro was elected to the European Parliament, he had an open-ended employment contract with RAI under which, with the contractual status of news editor, he was required to deal with current affairs issues providing services to the Network, on a salaried basis, like any other salaried employee. The programme, Sciuscià, which Santoro presented throughout the 2001-2002 television season, was not included in the programme schedule for RAI Due at which Santoro worked, because the Director of RAI Due, exercising his own independent editorial powers, felt that this programme did not fit in with his editorial policies. Moreover, RAI had already been sanctioned by the Communications Regulatory Authority for infringing the "par condicio" law with Santoro's programme. Enzo Biagi, on the other hand, worked with RAI on a self-employed basis, under a contract concluded on 20 December 1999, initially for a two-year period running from 1.2.2000 to 31.12.2001, which was subsequently extended to 31 December 2002 under the clause tacitly renewing the agreement if not terminated with three months' notice. After the termination of the contract, RAI offered Mr Biagi a new one, which he declined. (Annex: explanatory note of the LAW 112 OF 3 MAY 2004)

## **PUBLIC SUBSIDIES IN THE MEDIA SECTOR**

The Report contains some technical errors and/or misunderstandings about Italian laws and regulations. Point 37 in particular does not reflect in the proper way the law in force. The support to the press is, in Italy, realized either with direct (grants) or indirect (subsidized credit; tax credit; fiscal cuts) instruments; while the second ones are addressed to all the headings (because they are granted to the publishing products and not to the subjects); first ones are restricted by law (with reference to art. 21 of the Italian Constitution) to "niche" headings, which the Legislator thinks must exist as instruments aimed at granting pluralism regardless of their commercial outcome. Among them, political movement organs. Therefore we believe that it would be appropriate to state that "in Italy allocation of subsidies to newspapers was subjected to law".

## **CONFLICT OF INTEREST**

Paragraphs 54, 55 & 56 of the report relate to law n. 215/2004 which detail the rules for the resolution of conflict of interest. It is noted that the objections raised do not appear to be correct. In fact, it is not correct to state that the 'property' of a company or that of shareholding is not taken into account by law n. 215/2004. In clause 2 relating to incompatibility with holding a government position, 'property' could not be singled out because such provision would have been in contrast with clauses 42 and 51 of the Italian Constitution which protects the fundamental right of individuals to hold private property and freedom to be elected to public offices. Furthermore the provision of 'property' amongst 'incompatibilities' would have lead as a consequence of Forced Sale” of a company or taking part in the shareholding, to an irretrievable situation at the expiration of public office in contravention of the said clauses of the Constitution. Contrary to other provisions of incompatibility (such as the practice of professional activities), which legally provide for a right of quiescence and which will be restored at the expiration of the '*munus publicum*'. Rather, the law in its context, considers “property” in the following aspects:

- The second theory in which a “conflict of interest” subsists in accordance with clause 3 takes place independently of the situations of incompatibility stated in clause 2;
- Clause 5 compels the holder of public office, his spouse and even his relatives of second degree to declare their assets and shareholding, including those held up to three months prior to the assignment of that office (i.e. “disclosure”);
- In accordance with clause 6 (3), the Authority “garante della concorrenza” (competent in all cases of conflict in any type of professional activity), monitors the professional activity of the holder of public office (as stated by clause 5) and in the event that it finds that steps were taken to advantage the professional activity of the former, inflicts a pecuniary sanction on the company and reports the holder of the public office to Parliament (Political Censure);
- In accordance with clause 7, the “Garante delle Comunicazioni” performs the same activity but specifically in the area of mass communication and inflicts pecuniary sanctions also in the event that it provides privileged support to the holder of public office.
- Pecuniary sanctions inflicted on companies, apply to the owner of the company and not its director.

Finally, it is noted that in accordance with clause 1 of law n. 215/2004 holders of public office are: the prime minister, ministers, under-secretaries of state and commissioners of government.

## ANNEX

Please refer to the annex to document E/CN.4/2005/G/20, which reflects the full text of Law 112 of 3 May 2004 on the “Organization of the broadcasting system”.

## KAZAKHSTAN

### Introduction

During the period under review, the Special Rapporteur on the independence of judges and lawyers visited the country (please refer to document E/CN.4/2005/60/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.2, paras. 72-75, 77, 87 and 90):

72. Judicial and structural reforms: A professional and independent judiciary is not a privilege for the judges but a fundamental right of the public. Thus, if Kazakhstan is to be considered a truly democratic State, it is crucial to introduce legal adjustments that may even include constitutional reforms so as to reach a fairer balance of power between the branches of government and, more especially, increase the independence of the Judiciary. Based on the example of other presidential systems, the Special Rapporteur believes that this is possible without affecting the presidential nature of the political system. Those issues that are most crucial in this connection relate to:

- (i) The process of nomination of judges at all levels of the court system, their tenure, removal and salaries which should not remain the quasi exclusive domain of the President of the Republic;
- (ii) The powers of the prosecutor which are clearly too far reaching and represent a major bottleneck to an independent Judiciary;
- (iii) The composition and functioning of the Higher Judicial Council which make it entirely dependent upon the President of the Republic; and
- (iv) The weakness of the Constitutional Council which is in no position to counterbalance the influence of the President of the Republic since it is not allowed to review presidential decrees and is exposed to presidential veto.

73. Ratification of international human rights instruments and related legal steps: The Special Rapporteur welcomes steps taken by Kazakhstan since 1991 to accede to a number of international human rights instruments, especially the signature of the ICCPR and the ICESCR, and urges the authorities to ensure their prompt ratification, without reservations, including accession to the Optional Protocol of the ICCPR. He recommends that, where necessary, national legislation be amended so as to conform to international standards. Having in mind the very important and welcome step taken by Kazakhstan towards the abolition of the death penalty, he urges the authorities to consider similar steps with regard to the Optional Protocol on the Abolition of the Death Penalty. He further urges them to consider similar steps with regard to the Optional Protocol on Torture. He urges the Supreme Court to show leadership with respect to human rights by referring to the above instruments in their decisions as is permissible under Article 4(3) of the Constitution, and encourages all judges to apply international human rights norms.

74. Legal and human rights education and training: Particularly urgent steps, coupled with the allocation of the necessary funding, should be taken to improve the level of legal education and to introduce continued legal education and training so as to raise the level of professionalism of prosecutors, judges and lawyers and ensure implementation of new laws and amendments. In this respect, the Special Rapporteur welcomes the creation of the Judicial Academy and urges the international community to support this institution. It is indispensable if the Judiciary is to play

its role both more effectively and in keeping with national and international norms and principles. To this end, separate and mandatory courses on international human rights law, international humanitarian law and international refugee law should be introduced into the national law school curriculum and mandatory continuous training in these three branches of international public law should be developed for exercising judges, prosecutors and lawyers who should further be made aware of the various international principles relating to the Judiciary. This should be coupled with human rights training for law enforcement officials and also with campaigns aimed at increasing human rights awareness among the public, so as to develop in Kazakhstan a human rights collective culture that meets the country's constitutional principles and objectives.

75. Freedom of expression: All lawyers, judges and prosecutors need to be specifically trained on issues of freedom of expression in order to acquire a better understanding of the extent and exercise of this right by the press, political opponents and non governmental organizations.

77. Availability of legal reference documents, national statistics and jurisprudence: current efforts made to render recent legal changes promptly available in judicial and law libraries and electronically should be pursued, and should be combined with action to also make available all relevant international instruments and principles and national and international legal publications. Special efforts should be made to improve the compilation and availability of reliable and constantly updated statistical data and of jurisprudence. It would further be advisable that judicial statistics become available directly from the State Statistical Office or the MOJ rather than the Office of the Prosecutor General, as is currently the case.

87. Access to courts: The Government should do all in its power to guarantee access by all, most notably in rural areas. It should organize campaigns aimed at increasing public awareness and confidence – including among organizations representing groups such as children, women, minorities and the disabled – that the legal system upholds the rule of law and can provide redress and remedies.

90. National Ombudsman: The respective mandates of the Presidential Commission on Human Rights and the Ombudsman should be clarified. It is desirable that this is done by law and not Presidential decree. The reform concerning the Ombudsman should aim at consistency with the Paris Principles<sup>22</sup>. The public should be better explained the role of the Ombudsman, which itself should react promptly to any complaints made by an accused or his/her lawyer, press for thorough and expeditious investigation and, whenever appropriate, sanctions against those responsible.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.2, paras. 78 and 84):

78. Gender awareness: While welcoming the reforms made to raise gender awareness and promote women's rights in Kazakhstan – a country that could apparently be seen as a role model to various others in the region – the Special Rapporteur trusts that further progress may be achieved through close cooperation between UNIFEM, the National Commission on Family and Women and competent NGOs. All judicial personnel should receive in-depth gender training and UNIFEM's initiative to introduce a training manual on CEDAW for the judiciary ought to be

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<sup>22</sup> See OHCHR Fact Sheet N° 19

welcomed and encouraged. Improved gender balance in high levels of the Judiciary, especially the Supreme Court, is highly desirable.

84. Criminalization of exploitation of, and violence against, women: Steps must be taken towards the criminalization of all forms of exploitation of, and violence against women, including domestic violence, which has to be seen as a matter of State interest. The draft law on domestic violence must be resolutely pursued and the wording of the legislation must ensure that the Procuracy and the Judiciary consider these acts as serious offences so that complainants no longer have to pursue the case as a private prosecution. The investigation stage is also crucial to ensure the effective implementation of this future legislation.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.2, paras. 76, 82-84):

76. Torture and ill-treatment: All judicial officials should, in every instance (i) conduct prompt, impartial and full investigations into allegations of torture, (ii) properly investigate any failures to prosecute alleged perpetrators as required by articles 12 and 13 of CAT, and (iii) exercise their powers of excluding evidence obtained under duress or torture. Here also, corresponding training should be dispensed to law enforcement officials.

82. Pre-trial detention: While the Government has made considerable improvement in this area, more steps are needed so that pre-trial detention becomes an exception rather than the rule. Reforms are needed to the Code of Criminal Procedure (i) to reduce the period of prolonged pre-trial detention that is currently determined by the Procurator's office, and (ii) to ensure judicial review of the determination of continued pre-trial detention.

83. Death sentence: Transforming the current moratorium into abolition of the death penalty would be a very welcome development, and one consistent with the international trend. It would be encouraging if such development were coupled with the ratification of the Optional Protocol on the Death Penalty.

84. Criminalization of exploitation of, and violence against, women: Steps must be taken towards the criminalization of all forms of exploitation of, and violence against women, including domestic violence, which has to be seen as a matter of State interest. The draft law on domestic violence must be resolutely pursued and the wording of the legislation must ensure that the Procuracy and the Judiciary consider these acts as serious offences so that complainants no longer have to pursue the case as a private prosecution. The investigation stage is also crucial to ensure the effective implementation of this future legislation.

### **IV. Administration of justice and the rule of law**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.2, paras. 72, 79-81, 85-88 and 90):

72. Judicial and structural reforms: A professional and independent judiciary is not a privilege for the judges but a fundamental right of the public. Thus, if Kazakhstan is to be considered a truly democratic State, it is crucial to introduce legal adjustments that may even include constitutional reforms so as to reach a fairer balance of power between the branches of government and, more



especially, increase the independence of the Judiciary. Based on the example of other presidential systems, the Special Rapporteur believes that this is possible without affecting the presidential nature of the political system. Those issues that are most crucial in this connection relate to:

- (i) The process of nomination of judges at all levels of the court system, their tenure, removal and salaries which should not remain the quasi exclusive domain of the President of the Republic;
- (ii) The powers of the prosecutor which are clearly too far reaching and represent a major bottleneck to an independent Judiciary;
- (iii) The composition and functioning of the Higher Judicial Council which make it entirely dependent upon the President of the Republic; and
- (iv) The weakness of the Constitutional Council which is in no position to counterbalance the influence of the President of the Republic since it is not allowed to review presidential decrees and is exposed to presidential veto.

79. Procurator: Kazakhstan needs to amend Article 16(2) of the Constitution and to drastically amend its Criminal Code and Criminal Procedure Code so as to reduce the procurator's dominating role throughout the judicial process and secure, in both law and practice, a fairer balance between the respective roles of the procurator, defense lawyer and judge. In particular, the power of arrest, search and seizure should belong to the judge rather than the procurator.

80. Judges: The Law on the Status of Judges should be further amended so as to increase judges' professional level, not only through the education and continued training dispensed by the Judicial Academy, but also through the creation of a career as such, guarantee of tenure and stability. In that form, judges would no longer feel threatened in their position because, in conscience, they have acquitted a suspect instead of following the prosecutor's request for a sentence, or because their decisions have been overturned on appeal. It is urgent to separate out the application of disciplinary sanctions to judges from the act of judging or resolving a case on appeal. Furthermore, any acts of corruption should be duly sanctioned as per law. Finally, salaries should be further reviewed so as to ensure a better balance between the various court levels and also prompt interest for the position of judge in rural areas.

81. Defense: at the pre-trial stage, defense counsels must be granted powers to have full access to the evidence and prepare their own case for the trial. Their role during the trial should be reinforced so they can effectively counter that of the prosecutor. Another advisable reform is the establishment of a national system of public defenders. The Special Rapporteur refers to principle 3 of the UN Basic Principles on the Role of Lawyers according to which "*Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.*" Finally, local bar associations should be allowed to get the status of a professional self-governing body: currently, they are not permitted to be licensed, accredited or have control over disciplinary matters.

85. Jury trial: Current efforts to establish a jury system should be pursued in order to enhance independent decision-making, and also to promote the involvement of civil society into the administration of justice with a view to securing public confidence.

86. Deontology, transparency and accountability: If the public is to trust the judiciary, drastic and urgent measures need to be taken to develop a strong and compulsory Code of Ethics and to increase accountability. Preventing and punishing acts of corruption and bribery in all levels of

the judiciary and the legal education system is definitely a crucial and priority task. The development and implementation of anti-corruption initiatives, possibly with the assistance of the international community, should target the root causes of the long established judicial “culture” of corruption and include adequate sanctions.

87. Access to courts: The Government should do all in its power to guarantee access by all, most notably in rural areas. It should organize campaigns aimed at increasing public awareness and confidence – including among organizations representing groups such as children, women, minorities and the disabled – that the legal system upholds the rule of law and can provide redress and remedies.

88. Public access to trial records: Such access should henceforth be ensured by law.

90. National Ombudsman: The respective mandates of the Presidential Commission on Human Rights and the Ombudsman should be clarified. It is desirable that this is done by law and not Presidential decree. The reform concerning the Ombudsman should aim at consistency with the Paris Principles<sup>23</sup>. The public should be better explained the role of the Ombudsman, which itself should react promptly to any complaints made by an accused or his/her lawyer, press for thorough and expeditious investigation and, whenever appropriate, sanctions against those responsible.

## **V. Fundamental freedoms**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.2, para. 75):

75. Freedom of expression: All lawyers, judges and prosecutors need to be specifically trained on issues of freedom of expression in order to acquire a better understanding of the extent and exercise of this right by the press, political opponents and non governmental organizations.

## **VI. Economic and social rights**

n/a

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on independence of judges and lawyers (E/CN.4/2005/60/Add.2, paras. 78, 84 and 89):

78. Gender awareness: While welcoming the reforms made to raise gender awareness and promote women’s rights in Kazakhstan – a country that could apparently be seen as a role model to various others in the region – the Special Rapporteur trusts that further progress may be achieved through close cooperation between UNIFEM, the National Commission on Family and Women and competent NGOs. All judicial personnel should receive in-depth gender training and UNIFEM’s initiative to introduce a training manual on CEDAW for the judiciary ought to be

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<sup>23</sup> See OHCHR Fact Sheet N° 19

welcomed and encouraged. Improved gender balance in high levels of the Judiciary, especially the Supreme Court, is highly desirable.

84. Criminalization of exploitation of, and violence against, women: Steps must be taken towards the criminalization of all forms of exploitation of, and violence against women, including domestic violence, which has to be seen as a matter of State interest. The draft law on domestic violence must be resolutely pursued and the wording of the legislation must ensure that the Procuracy and the Judiciary consider these acts as serious offences so that complainants no longer have to pursue the case as a private prosecution. The investigation stage is also crucial to ensure the effective implementation of this future legislation.

89. Juvenile justice: The Government should quickly move forward with its plan to introduce legal reforms in order to establish a separate juvenile justice system and, at the same time, pursue its work with UNICEF to develop a national Child Right's Code. The MOJ should further introduce sentencing reforms to provide juveniles with the benefit of alternative sentences so that imprisonment is not applicable in cases of a minor nature and is not necessarily the rule in more serious cases. This would minimize the number of children entering the criminal system.

#### **IX. The right to development and international cooperation**

n/a

#### **X. Comments from the Government**<sup>24</sup>

n/a

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<sup>24</sup> As published as official documents of the CHR.

## KENYA

### Introduction

During the period under review, the Special Rapporteur on adequate housing visited the country (please refer to document E/CN.4/2005/48/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, paras. 82(a)(c)(d)(g)):

82. (a) It is essential that there be full incorporation of the human rights perspective, including a clear commitment to non-discrimination and gender equality, at all levels of governance, policy-making and implementation. The integration of human rights perspectives in sectoral policies, housing and slum-upgrading programmes, and the constitutional and legal framework, and the application of human rights-sensitive indicators would be a first step towards the implementation of international human rights standards and the realization of the relevant Millennium Development Goals;

(c) A comprehensive approach needs to be adopted to address the issues of forced evictions, security of tenure, legalization of informal settlements and slum upgrading, and to ensure close consultation with those affected at the planning stage and with respect for the right to participation in decision-making in these areas. With respect to evictions, the Government should immediately put into practice the procedure called for under general comment No. 7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions. In the meantime, an absolute moratorium on forced evictions should be implemented. United Nations agencies and programmes, as well as the donor community, are encouraged to play a more active role in ensuring that international human rights law is respected in slum-upgrading schemes and other development programmes, including processes that may lead to forced evictions;

(d) Human rights education, particularly on economic, social and cultural rights, should be improved. The Special Rapporteur is encouraged by the establishment of the National Human Rights Commission, and recommends that its capacity to undertake training and awareness-raising activities to this end be strengthened. A particularly useful model which could be considered for cities and provinces of Kenya is the “Human Rights Cities” initiative developed by the People’s Movement for Human Rights Education (PDHRE) which is currently being coordinated jointly by PDHRE and UNDP;

(g) The Government could approach the OHCHR Technical Cooperation Programme and other institutions for assistance in the development and implementation of human rights programmes and action plans;

### II. Non-discrimination and equality before the law

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, paras. 82(a)(e)):

82. (a) It is essential that there be full incorporation of the human rights perspective, including a clear commitment to non-discrimination and gender equality, at all levels of governance, policy-making and implementation. The integration of human rights perspectives in sectoral policies, housing and slum-upgrading programmes, and the constitutional and legal

framework, and the application of human rights-sensitive indicators would be a first step towards the implementation of international human rights standards and the realization of the relevant Millennium Development Goals;

(e) The Government must give particular attention to existing inequalities when elaborating policies and strategies in order to ensure that women's rights are fully recognized. Although the Ministry of Gender has an essential role to play, the gender dimension is cross-cutting and all ministries need to become more involved and sensitized;

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

### **IV. Administration of justice and the rule of law**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, para. 82(f)):

82. (f) The Government should consider the establishment of a tribunal on informal human settlements as a quasi-judicial body. The tribunal could be instituted under a relevant statute, such as the Government Lands Act, to provide remedies to the intractable problem of allocation of public land by the administration and authorities through illegal and irregular practices, including land speculation and land-grabbing. Such a tribunal should be empowered to investigate and determine the validity and merit of claims to property rights by settlers, and be guided by the principles of equality and non discrimination. It should stipulate conditions for granting security of tenure over public land to deserving settlers and ensure that public land remains a common use resource;

### **V. Fundamental freedoms**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, para. 82(c)):

82. (c) A comprehensive approach needs to be adopted to address the issues of forced evictions, security of tenure, legalization of informal settlements and slum upgrading, and to ensure close consultation with those affected at the planning stage and with respect for the right to participation in decision-making in these areas. With respect to evictions, the Government should immediately put into practice the procedure called for under general comment No. 7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions. In the meantime, an absolute moratorium on forced evictions should be implemented. United Nations agencies and programmes, as well as the donor community, are encouraged to play a more active role in ensuring that international human rights law is respected in slum-upgrading schemes and other development programmes, including processes that may lead to forced evictions;

## **VI. Economic and social rights**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, paras. 82(c)(d)(h)):

82. (c) A comprehensive approach needs to be adopted to address the issues of forced evictions, security of tenure, legalization of informal settlements and slum upgrading, and to ensure close consultation with those affected at the planning stage and with respect for the right to participation in decision-making in these areas. With respect to evictions, the Government should immediately put into practice the procedure called for under general comment No. 7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions. In the meantime, an absolute moratorium on forced evictions should be implemented. United Nations agencies and programmes, as well as the donor community, are encouraged to play a more active role in ensuring that international human rights law is respected in slum-upgrading schemes and other development programmes, including processes that may lead to forced evictions;

(d) Human rights education, particularly on economic, social and cultural rights, should be improved. The Special Rapporteur is encouraged by the establishment of the National Human Rights Commission, and recommends that its capacity to undertake training and awareness-raising activities to this end be strengthened. A particularly useful model which could be considered for cities and provinces of Kenya is the “Human Rights Cities” initiative developed by the People’s Movement for Human Rights Education (PDHRE) which is currently being coordinated jointly by PDHRE and UNDP;

(h) The authorities should enhance their cooperation with United Nations agencies and international institutions, in particular UN-Habitat and OHCHR, to adopt and integrate human rights in developing indicators and benchmarks for implementing and monitoring the Millennium Development Goals. The Government is also encouraged to work in partnership with NGOs and other civil society organizations proposing alternative development plans.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, para. 82(b)):

(b) The Special Rapporteur recommends that the Government further review existing programmes as well as policies and laws being developed, in order to orient them towards the poorest, vulnerable or marginalized segments of the population, such as indigenous peoples, persons living with HIV/AIDS, disabled persons, the Watta community, other formerly or currently destitute pastoralists, and forest dwellers. The Special Rapporteur recommends that the Government establish an emergency assistance programme for extreme cases of humanitarian crisis, such as the community in Huruma village in Kieni forest, who are being denied the right to adequate housing;

## **IX. The right to development and international cooperation**

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2005/48/Add.2, paras. 82(a)(g)):

82. (a) It is essential that there be full incorporation of the human rights perspective, including a clear commitment to non-discrimination and gender equality, at all levels of governance, policy-making and implementation. The integration of human rights perspectives in sectoral policies, housing and slum-upgrading programmes, and the constitutional and legal framework, and the application of human rights-sensitive indicators would be a first step towards the implementation of international human rights standards and the realization of the relevant Millennium Development Goals;

(g) The Government could approach the OHCHR Technical Cooperation Programme and other institutions for assistance in the development and implementation of human rights programmes and action plans;

## **X. Comments from the Government**<sup>25</sup>

n/a

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<sup>25</sup> As published as official documents of the CHR.

## KYRGYZSTAN

### Introduction

During the period under review, the Independent Expert on structural adjustment policies and foreign debt visited the country (please refer to document E/CN.4/2005/42/Add.1).

### I. Institutional and legal framework for the promotion and protection of human rights

Independent expert on the effects of structural adjustment policies and foreign debt (E/CN.4/2005/42/Add.1, paras. 58 to 60 and 65 (b) (d) (e))

58. The independent expert would thus encourage the Office of the Ombudsman to play a greater role in the independent monitoring and evaluation of the NPRS implementation from a human rights perspective.

59. The review by the independent expert and by any other body and mechanism would have been much facilitated if better public expenditure management systems had existed to provide Government expenditure data in real time by sectors and by categories of beneficiaries for pro-poor spending. This is an ongoing challenge that merits priority attention by the Government and the donor and international agencies.

60. Human rights principles and concerns should also inform the efforts to further improve NPRS indicators, in particular indicators related to governance, which remain underdeveloped. Particular attention will also need to be given to the implementation of obligations under international human rights treaties, including the submission of reports to treaty bodies, and to greater disaggregation of data to capture gender, rural-urban and regional disparities and specific data on vulnerable groups. The Government may wish to take note of the indicator framework developed for the Common Country Assessment and the United Nations Development Assistance Framework, in which some of these concerns have been addressed, and to seek advice and assistance from the United Nations country team, as appropriate.

65. (b) Human rights norms and principles such as equality and non-discrimination, participation and inclusion, and accountability and the rule of law, should guide and inform the implementation of the NPRS and other programmes at all stages. The independent expert commends the inclusive approach and participatory process adopted in the NPRS. The NPRS should be further strengthened by clearly stipulating the obligations of the State under the international human rights treaties it ratified, and by elaborating on the means to implement them, linking with the NPRS objectives in all spheres;

65. (d) Monitoring and accountability framework should be further strengthened by improving the framework of indicators on governance and human rights, and by greater disaggregation of data to capture gender, rural-urban and regional disparities and specific data on vulnerable groups. Public expenditure management systems should be further improved to provide government expenditure data in real time by sectors and by categories of beneficiaries for pro-poor spending;

65. (e) The independent expert encourages the Office of the Ombudsman to play a greater role in the independent monitoring and evaluation of the NPRS implementation from human rights perspectives.



## **II. Non-discrimination and equality before the law**

n/a

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

## **IV. Administration of justice and the rule of law**

n/a

## **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Independent expert on the effects of structural adjustment policies and foreign debt (E/CN.4/2005/42/Add.1, paras. 39, 40, 42, 49, 55 and 65 (c))

39. Seen from this perspective, the independent expert would encourage the Government to focus on the identification of the poor and their varying needs and status in terms of access to health services, goods and facilities.

40. [The independent expert] recommends the Government to cooperate with and seek advice from the Special Rapporteur on the right to health and the Office of the United Nations High Commissioner for Human Rights as well as the United Nations country team in Kyrgyzstan in integrating human rights into the health sector reform process.

42. The independent expert encourages the local community [of Ak-Tuz] in continuing its activities, including under the LIFE programme, and combining them with raising more human rights awareness of the residents as holders of rights and the authorities as duty-bearers. Government and international support should be mobilized to improve access of the community to health services and to have a comprehensive environmental and health impact assessment, for the fulfilment of their right to health and the right to access to information.

49. The independent expert is encouraged by the intention of the Government to substantially increase education expenditures in the coming MTBF period. He ventures to suggest that in executing the NPRS in education and other sectors, the government programmes would benefit from further integration of human rights. This essentially requires that the realization of all human rights should be an explicit objective of the government and donor-supported programmes and that its implementation at all stages should be guided by human rights principles such as non-discrimination, equality and participation. Paying close attention to human rights dimensions often helps to reveal underlying causes of development challenges that require stronger political will and to find innovative solutions that could be implemented by making the maximum use of available resources.

55. The independent expert commends the progress in the reform of the social security system, and the increased allocation to the Unified Monthly Benefit system that directly

benefits the poorest. Human rights have a particular concern about those who are disadvantaged, marginalized and living in poverty. Arising from human rights obligations relating to non-discrimination and equal treatment, States need to monitor and ensure that general and specific interventions reach the most vulnerable and marginal. In this context, the independent expert notes with interest that the Government has launched a monitoring effort in the form of an “audit” of beneficiaries that will be carried out by an independent local institution.

65. (c) The independent expert is concerned about the deterioration of facilities and the prevalence of informal payments in the education and health sectors, which undermine the availability of and accessibility by the poor and the vulnerable to these services for the enjoyment of their rights to education and health. While welcoming the intention of the Government to increase expenditures on these sectors under the MTBF period 2005-2007, more concrete measures and innovative approaches should be taken to better target these services to meet the needs of the most vulnerable segment of the population. Useful lessons could be drawn from community-based initiatives supported by UNDP and UNICEF;

#### **VII. Cultural rights**

n/a

#### **VIII. Situation of specific groups**

n/a

#### **IX. The right to development and international cooperation**

Independent expert on the effects of structural adjustment policies and foreign debt (E/CN.4/2005/42/Add.1, para. 65 (a))

65. (a) In recognition of the positive progress made, the international community should provide further support to Kyrgyzstan, in the form of another round of Paris Club debt relief expected in early 2005, and in the form of more assistance in grants terms so as not to negatively affect the debt sustainability strategy adopted by the Government;

#### **X. Comments from the Government**<sup>26</sup>

n/a

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<sup>26</sup> As published as official documents of the CHR.

## LATVIA

### Introduction

Au cours de la période concernée, le Groupe de Travail sur la détention arbitraire a effectué une visite en Lettonie (veuillez vous référer au document E/CN.4/2005/6/Add.2).

### I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

n/a

### II. Non-discrimination et égalité devant la loi

n/a

### III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne ; le droit à l'intégrité physique et morale

Groupe de Travail sur la détention arbitraire (E/CN.4/2005/6/Add.2, paras. 80 et 84)

80. Le Groupe de travail demeure néanmoins préoccupé par la durée et la fréquence de la détention provisoire, la sévérité de son régime et ses incidences sur la présomption d'innocence.

84. Le Groupe de travail invite le Gouvernement à revoir le cadre juridique de la détention provisoire et sa pratique, en particulier :

- a) Prendre les mesures nécessaires pour réduire la durée de la garde à vue et de la détention avant inculpation et améliorer les conditions de détention dans les postes de police ;
- b) Veiller à ce que la détention provisoire soit dans la pratique une mesure exceptionnelle à laquelle il n'est fait recours que lorsque les mesures alternatives à la détention sont inefficaces ;
- c) Sensibiliser les juges pour ne qu'ils ne recourent à la détention provisoire qu'après s'être assurés de sa nécessité et après avoir entendu l'accusé en personne et le cas échéant son conseil ;
- d) Prendre les mesures appropriées pour réduire la durée de la détention avant jugement et garantir à toute personne privée de liberté d'être jugée dans un délai raisonnable ou libéré. Le Groupe de travail considère excessif le maintien en détention provisoire pour une durée qui peut aller jusqu'à quatre ans et demi (18 mois à trois ans pour les besoins de l'enquête préliminaire et 18 mois en attente de jugement) ;
- e) Reconsidérer la durée de la privation de liberté en attente de jugement et renforcer les mesures alternatives à la détention pour éviter dans la mesure du possible le maintien en détention de personnes qui sont en attente d'être jugées . En tout état de cause aucune personne ne devrait être maintenue en détention au delà de la limite des délais légaux. D'après le tableau fourni par l'administration des prisons, il semblerait que 1, 608 détenus étaient, au moment de la visite, maintenus en détention au-delà de la limite légale. Le Groupe de travail invite le Gouvernement à prendre les mesures nécessaires pour remédier à cette situation ;
- f) Le régime de détention des prévenus devrait relever de la compétence de l'administration pénitentiaire, les restrictions qui s'ajoutent à la privation de liberté ne devraient être imposées que dans la mesure où elles sont nécessaires au maintien de la discipline dans la prison ou pour ne pas

entraver le déroulement de l'enquête. En tout état de cause, elles devraient être prononcées par le juge ou sous son contrôle. La détention provisoire ne devrait également en aucun cas être appliquée pour remplir une fonction punitive ;

g) Le Groupe de travail invite le Gouvernement à éviter dans la mesure du possible que des prévenus soient maintenus en détention provisoire dans les postes de police ou qu'ils y retournent après leur placement dans les établissements pénitentiaires. Pour garantir le respect des droits des prévenus privés de liberté, une véritable séparation entre les missions des organes chargés de l'investigation et ceux chargés de la détention des prévenus devrait être assurée ;

h) L'exécution des peines privatives de liberté pour infractions administratives dans les cellules des postes de police devrait également être évitée et des peines de substitution à la privation de liberté envisagées ;

i) Les plaintes contre les agissements qui pourraient être commis par des agents de l'État, et en particulier les forces de police, devraient être confiées à un organe externe, indépendant et impartial, doté de pouvoirs effectifs et habilité à effectuer des visites inopinées dans les lieux de détention.

#### **IV. Administration de la justice et état de droit**

##### Groupe de Travail sur la détention arbitraire (E/CN.4/2005/6/Add.2, paras. 79, 80, 82 et 83)

79. Le Groupe de travail note avec satisfaction les efforts déployés pour garantir le respect des droits de l'homme et améliorer le traitement des personnes privées de libertés. Il a pu constater que le cadre légal de la détention a été plusieurs fois modifié et des réformes substantielles ont été mises en œuvre. Toutes les personnes rencontrées reconnaissent que la situation s'est nettement améliorée au cours de la dernière décennie. Il a également été informé des réformes en cours, dont la plus importante est celle portant sur la révision du Code de procédure pénale adoptée en 1961.

80. Le Groupe de travail (...) est également préoccupé par l'ineffectivité de l'accès à l'avocat commis d'office, le non-respect du principe du contradictoire et de l'égalité des armes dans l'enquête préliminaire, et le déficit dans l'application des peines et des mesures alternatives à la détention.

82. Le Groupe de travail invite le Gouvernement de la Lettonie à revoir sa législation et sa pratique pour garantir à chaque fois que l'intérêt de la justice l'exige, l'effectivité d'une défense de qualité, non seulement aux personnes démunies, mais à toute personne privée de liberté. L'Etat devrait surtout mettre en œuvre les moyens et les instruments qui garantissent l'exercice effectif de ce droit et notamment :

a) Veiller à ce que dès la détention, les personnes placées en garde à vue aient effectivement la possibilité de se mettre en contact avec leur famille et de communiquer avec un avocat ;

b) Garantir la présence active de l'avocat dès la garde à vue ou, à tout le moins, dès l'inculpation, au cours de toute la phase de l'instruction, pendant toute celle du jugement et lors de l'exercice des voies de recours ;

c) Assurer à chaque fois que l'intérêt de la justice l'exige, la couverture financière de l'assistance d'un avocat dès la détention et pour toutes les phases du processus pénal ;

d) Abroger le dispositif juridique qui met à la charge de l'accusé, les honoraires de l'avocat commis d'office en cas de condamnation ; et

e) Soumettre à un contrôle judiciaire, le renoncement devant la police à l'assistance d'un conseil, afin de s'assurer que ce renoncement est réellement volontaire et qu'il n'affecte pas l'intérêt d'une bonne administration de la justice.

83. Le Groupe de travail recommande au Gouvernement de mettre en conformité sa législation et sa pratique avec les normes du droit international pour garantir le respect de la présomption d'innocence, du principe du contradictoire et de l'égalité des armes dans la phase de l'enquête préliminaire. L'avocat et l'accusé doivent avoir accès à l'ensemble des pièces de la procédure d'instruction dès l'inculpation et en tout état de cause l'avocat doit, après communication du dossier de l'accusation, disposer de temps suffisant avant l'ouverture du procès pour assurer une défense de qualité à son client.

## **V. Libertés fondamentales**

### **Groupe de Travail sur la détention arbitraire (E/CN.4/2005/6/Add.2, paras. 81 et 86)**

81. Enfin et s'agissant de la détention administrative des étrangers en situation irrégulière, le Groupe de travail reconnaît que d'importantes mesures ont été adoptées, mais il demeure préoccupé par le fait que des personnes qui sont nées ou qui ont vécu pendant longtemps en Lettonie soient séparées de leur famille, placées en détention et déportées. Le Groupe de travail est également préoccupé par la situation des personnes arrêtées et refoulées aux frontières. Il est surtout préoccupé par la brièveté des délais qui leur sont accordés pour introduire un recours contre une décision de refoulement et par le fait qu'elles ne sont pas informées de leurs droits et qu'elles n'ont pas accès à l'avocat commis d'office.

86. Pour ce qui est de la détention administratives des non ressortissants, le Groupe de travail recommande au Gouvernement de prendre les mesures appropriées pour :

- a) Eviter la détention de personnes qui au regard de la loi lettone sont considérées comme des non ressortissants, alors qu'elles sont nées ou résident depuis longtemps en Lettonie et qui souvent ont des liens familiaux très forts dans le pays ;
- b) Garantir à toute personne détenue dans le cadre de l'application de la loi sur l'immigration, un recours judiciaire effectif pour contester la légalité des décisions administratives de détention, d'expulsion ou de refoulement ;
- c) Etendre, dans la pratique, le droit à l'assistance d'un conseil commis d'office aux étrangers détenus en vue de leur expulsion ou de leur refoulement;
- d) Prolonger les délais prévus dans le cadre de la procédure d'asile accélérée, en particulier pour garantir l'effectivité des recours aux personnes dont la demande d'asile a été rejetée ;
- e) Réduire la durée maximale de la détention des demandeurs d'asile.

## **VI. Droits économiques et sociaux**

n/a

## **VII. Droits culturels**

n/a

### **VIII. Situation de groupes spécifiques**

Groupe de Travail sur la détention arbitraire (E/CN.4/2005/6/Add.2, paras. 80 et 85)

#### **La situation des mineurs**

80. La situation des mineurs détenus est un autre sujet de préoccupation, le Groupe de travail ayant constaté que malgré les efforts, dans la pratique, les mineurs sont souvent traités comme des adultes.

85. Le Groupe de travail invite le Gouvernement à accorder une attention particulière à la situation des mineurs en conflit avec la loi :

a) Dans le cadre de la réforme du Code de procédure pénale, envisager l'institution d'une justice spécialisée pour les mineurs et mettre en conformité la législation et la pratique en matière d'arrestation et de détention des mineurs afin de les rendre pleinement conformes aux articles 37, 39 et 40 de la Convention Internationale relative aux droits de l'enfant à laquelle la Lettonie est partie, ainsi qu'aux autres normes internationales pertinentes ;

b) La garde à vue des mineurs et leur maintien en détention dans les postes de police, avant notification des charges devraient être reconsidérés et dans la mesure du possible évités ;

c) Le recours à la détention provisoire pour les mineurs devrait être dans la pratique une mesure exceptionnelle à laquelle il ne devrait y être recouru qu'en dernière extrémité. D'autres moyens devraient être utilisés autant que possible ;

d) Le régime de détention appliqué aux mineurs devrait être adapté à leur personnalité et à leur âge ;

e) La législation pénale devrait être modifiée pour appliquer aux mineurs des peines inférieures à celles prévues pour les majeurs, diversifier les peines alternatives à la privation de liberté et étendre le pouvoir discrétionnaire des juges lorsqu'ils se prononcent pour la culpabilité, afin d'éviter, autant que possible, la privation de liberté aux mineurs ;

### **IX. Le droit au développement et la coopération internationale**

n/a

### **X. Commentaires reçus du Gouvernement**<sup>27</sup>

n/a

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<sup>27</sup> As published as official documents of the CHR.

## **LIBERIA**

### **Introduction**

The Independent Expert on the situation of human rights in Liberia is submitting her report to the Commission on Human Rights (please refer to document E/CN.4/2005/119).

### **I. Institutional and legal framework for the promotion and protection of human rights**

Independent Expert on the situation of human rights in Liberia (E/CN.4/2005/119, para. 74)

74. There is the need to establish a national law reform commission to, among other things, ensure that domestic laws are brought in line with international instruments to which Liberia is party. The government of Liberia should be assisted through the various line ministries to properly understand its obligations under international instruments that it had ratified. OHCHR could design and conduct training workshops on reporting procedures of CEDAW, CRC, ICCPR and ICESCR. Assistance could also be provided on follow-up or implementation of the recommendations of treaty bodies.

### **II. Non-discrimination and equality before the law**

n/a

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Independent Expert on the situation of human rights in Liberia (E/CN.4/2005/119, para. 69)

69. The unfortunate decision to start disarmament in December 2003 without identifying appropriate cantonment sites and not involving the warring factions, as well as limited collaboration with local authorities led to public disturbances and death of at least 11 people. It is imperative that detailed public investigations be conducted into what happened.

### **IV. Administration of justice and the rule of law**

Independent Expert on the situation of human rights in Liberia (E/CN.4/2005/119, para. 72)

72. The international community must assist the people of Liberia in bringing an end to impunity. Institutions put in place to address war-related human rights abuses and violations should be assisted and strengthened. The judicial system should be rehabilitated and resources provided to law enforcement agencies to respond to the enormous challenges to the rule of law in Liberia. In this regard, the process of restructuring and reorganizing the Liberia National Police should be hastened and take into account the criteria established in the CPA to avoid any mistrust.

### **V. Fundamental freedoms**

n/a

## **VI. Economic and social rights**

Independent Expert on the situation of human rights in Liberia (E/CN.4/2005/119, para. 73)

73. At this stage of the implementation of the peace process and reconstruction, it is important that sacrifices are made and government officials must live by examples. There is a need to check waste and to review government priorities to ensure that resources are devoted to essential needs rather than luxurious living for government officials.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Independent Expert on the situation of human rights in Liberia (E/CN.4/2005/119, para. 71)

71. There is an urgent need for increased sensitization nationwide on the DDRR, and the NCDDRR should lead this process. Well-planned civic education programmes should be designed and implemented on rights and responsibilities of citizens and the need for zero tolerance on violence and corruption. In collaboration with UNHCR, the NCDDRR should consider a strategy to inform and educate Liberian refugees on the actual conditions in Liberia. This should begin soon and certainly before the estimated commencement of repatriation in October 2004.

## **IX. The right to development and international cooperation**

Independent Expert on the situation of human rights in Liberia (E/CN.4/2005/119, paras. 70 and 75)

70. Disarmament is crucial for providing a secure environment for addressing the human rights challenges in Liberia. The failed disarmament programme in 1997 should inspire total commitment to the success of the current process. UNMIL must secure the full cooperation and work in partnership with national stakeholders, including the NCDDRR. Donors should fully commit to all four components of the DDRR programme and provide sufficient funding for it. The shortcomings in the implementation of the current DDRR programme, which undercuts the peremptory role of NCDDRR in policy and implementation, should be addressed as a matter of urgency. The sense of alienation of NCDDRR and the dichotomy between UNMIL, DDRR, JIU and NCDDRR should be redressed and eliminated.

75. The Human rights and Protection Component of UNMIL must be provided adequate resources to implement its very important mandate covering capacity-building, monitoring, technical cooperation and advocacy. Consideration should also be given to an organizational restructuring which should permit the human rights component to operate more directly under the humanitarian and recovery arm. This will permit a more integrated human rights approach to the restoration of Liberia.

## **X. Comments from the Government**<sup>28</sup>

n/a

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<sup>28</sup> As published as official documents of the CHR.



## MONGOLIA

### Introduction

During the period under review, the Special Rapporteur on the right to food visited the country (please refer to document E/CN.4/2005/47/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to food visited the country in 2004 (please refer to document E/CN.4/2005/47/Add.2, para. 57 (iii)).

57. The Special Rapporteur recommends that:

(iii) The excellent work of the National Human Rights Commission should be supported and strengthened. The Commission has a crucial role to play in the realisation of the right to food and should develop institutional capacities for research, monitoring and response to complaints on this issue. This should include monitoring of access to food and water of poor Mongolians and following up cases where people have been denied such access or where people have died of starvation, as well as monitoring the progressive realisation of the right to adequate food in the context of the fight against chronic undernourishment.

### II. Non-discrimination and equality before the law

n/a

### III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

### IV. Administration of justice and the rule of law

n/a

### V. Fundamental freedoms

n/a

### VI. Economic and social rights

Special Rapporteur on the right to food visited the country in 2004 (please refer to document E/CN.4/2005/47/Add.2, para. 57 (i) (ii) and (iv) to (xi)).

57. The Special Rapporteur recommends that:

- (i) A comprehensive study on the situation of food insecurity and chronic undernourishment should be carried out to determine the validity of the existing statistics and the urgency of the problem. The linkages between poverty and the lack of access to sufficient food must be explored. Future studies on nutritional deficiencies should examine the extent to which nutritional deficiencies are due to chronic under-consumption.

- (ii) The legal framework to protect the right to food under domestic law should be strengthened. Steps could be taken such as clarifying the relationship between international and domestic law and amending the 1995 Law on Food to include a recognition that all Mongolians should be entitled to the right to adequate food. Mechanisms of accountability should also be established to ensure that Mongolians can seek access to justice if the right to food is not being met. The Government should also submit its overdue reports on its implementation of the human rights treaties to which it is a party.
- (iii) ...
- (iv) Government policies and programmes should be established to address food insecurity and the lack of access to food for Mongolia's population. Responsibilities should be fully established between Ministries. Addressing food insecurity should also be fully integrated into the national poverty reduction strategy. In collaboration with its international donors, the government should ensure that adequate resources are directed towards the most vulnerable and ensure equitable access to food and water as a priority, particularly international aid which should be used to alleviate poverty and food insecurity.
- (v) Rural livelihoods should be supported and greater investment undertaken to support the creation of pastoralist institutions to improve the provision of public goods and essential services, including well maintenance, emergency fodder stocks, winter shelters and veterinary services.
- (vi) Pastoral land not be privatised in the future, as this would not solve issues of overgrazing but could rather exacerbate food insecurity and poverty. Institutions of common property and patterns of mobility should be considered to address overgrazing and improve sustainability.
- (vii) The institutional framework for the management of water resources be strengthened and responsibility allocated for ensuring access to water for all communities, including wells for rural populations and their animals, as well as water supplies for those living in urban centres which are not serviced, including the *ger* districts in Ulaanbaatar. There is also an urgent need to improve water quality.
- (viii) Overarching responsibility be established for the management of food aid. Mechanisms to monitor the impact of food aid on food security and the broader economy should be established, to ensure that food aid does not act as a disincentive to efforts to increase local production. Standard procedures should also be established for improved transparency and accountability for monetised food aid.
- (ix) Actions be taken to ensure that all groups have access to adequate social services and assistance, including not registered migrants and families without documents. The current restructuring of the social security system must include a review of the potential impacts on food security.
- (x) Further reforms of the economy protect against the inequities that have characterised the liberalisation and privatisation process, particularly affecting women, and be monitored to ensure that they do not result in greater levels of undernourishment. Accountability and transparency should be improved to remove the potential for corruption and favouritism.

- (xi) Finally, the current model of economic development be revised to address problems of poverty and chronic undernourishment, otherwise it appears the Mongolia's poor and hungry will be increasingly left behind. Mongolia's inherent obstacles as a remote landlocked country must also be recognised at the international level and the rules of trade liberalisation should permit development and the realisation of the right to adequate food. Addressing food insecurity and poverty must be prioritised for the realisation of the right to food.

**VII. Cultural rights**

n/a

**VIII. Situation of specific groups**

n/a

**IX. The right to development and international cooperation**

n/a

**X. Comments from the Government**<sup>29</sup>

n/a

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<sup>29</sup> As published as official documents of the CHR.

## MOZAMBIQUE

### Introduction

During the period under review, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental to health visited the country (please refer to document E/CN.4/2005/51/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, paras. 9, 15, 16, 30-32, 34, 52, 61, 86, 87 and 90):

9. While the Government of Mozambique has ratified many international instruments that provide for the right to health, it has not ratified the ICESCR. The Special Rapporteur urges the Government to ratify this Covenant as soon as possible.
15. [...] The Special Rapporteur urges the Government to review and revise its mental health legislation to ensure compliance with the right to health and other relevant human rights. He further encourages the Government to consider the adoption of a charter for the protection of patients' rights.
16. [...] The Special Rapporteur encourages the Government of Mozambique to establish a national human rights institution, in accordance with international standards, as a means of strengthening human rights capacity within the country. The institution should also give careful attention to the preparation of a charter for the protection of patients' rights.
30. The Special Rapporteur recommends that right to health and related human rights be mainstreamed into all national and international policy documents, and that technical assistance be provided where required. Policies based on human rights norms, including the right to health, are more likely to be effective, robust, sustainable, inclusive, equitable and meaningful - especially for the most vulnerable and disadvantaged members of society.
31. In particular, the Special Rapporteur urges the Ministry of Health to integrate the right to health throughout its activities as a means of reinforcing important elements of existing strategies such as community participation, poverty reduction, gender equality and accountability. For example, domestic and international human rights frameworks should be explicitly recognized and integrated in the revision of PESS. The international community, in particular donors and intergovernmental organizations, should be encouraged to assist Mozambique in fulfilling its human rights obligations by supporting the development and implementation of health-related policies. The Special Rapporteur recommends that the human rights components of UNDAF be strengthened and extended further in the process of review. He encourages all agencies, including WHO, increasingly to integrate human rights, and the right to health in particular, into their work.
32. The Special Rapporteur underscores the crucial importance of monitoring and accountability in relation to the right to health in Mozambique, both at the national level and with regard to international assistance and cooperation. National and international policies require effective mechanisms for ensuring transparency and accountability. For example, when discharging their responsibilities of international assistance and cooperation, donor Governments and institutions must be as transparent as possible. If a Mozambican stakeholder wishes to know how a developed State is contributing to the realization of the health-related Millennium

Development Goals in Mozambique, this information should be readily available. Moreover, the reasons for partners' policies should be clear and accessible. Any major shifts in policy should be foreshadowed, explained and discussed. The Government, civil society and the people of Mozambique are entitled to this information and process; such transparency is one of the qualities that distinguishes the discharge of an international responsibility from an act of charity.

34. [...] The Special Rapporteur recommends that greater attention be given to integrating human rights, in particular the human rights of vulnerable groups, into [the Action Plan for the Eradication of Absolute Poverty 2000-2004] PARPA during the review process. Particular attention should be paid to addressing inequalities between men and women, as well as the impact of poverty on vulnerable groups, such as children affected by HIV/AIDS.

52. Thus, the Special Rapporteur recommends that the Ministry of Health establish an independent review of user fees, with technical support from WHO. The review should determine whether user fees impede access, especially for those living in poverty, women and other disadvantaged groups and, if so, whether user fees should be abolished across the board or retained in some limited circumstances, such as the one indicated in the preceding paragraph. The review should include user fees for medical services and medicines. The review process should include the participation of disadvantaged groups. The Special Rapporteur also recommends that the donor community in Mozambique takes a clear position on user fees in the health sector, taking into account (i) evidence of the impact of user fees on those living in poverty and (ii) the human rights obligations of the Government to deliver medical services without discrimination in law or fact. If evidence confirms that user fees inhibit access to care, especially for those living in poverty and other disadvantaged groups, then prima facie their introduction or retention is inconsistent with the right to health.

61. Mozambique would benefit from a statutory medical council responsible for regulating, registering, supporting and disciplining health professionals. The Special Rapporteur encourages the Government to consult extensively with health professionals and other interested parties in relation to the proposed structure, mandate and powers of a medical council, including whether one council should be responsible for all health professionals, or whether different councils should be established for different types of health professionals. The Special Rapporteur suggests that the Government might approach the Commonwealth Secretariat to enquire whether they could provide technical assistance to establish a medical council.

86. The commitment of the Government of Mozambique, together with its bilateral and multilateral funding partners, to addressing health challenges in Mozambique is clearly reflected in the prioritization of health in national poverty reduction strategies, as well as the development of sound policies, strategies and regulations in the health sector. However, in order to make these initiatives more sustainable and equitable the Special Rapporteur urges the Government to explicitly integrate human rights norms, including the right to health, into all national and international policy documents, with particular attention to key human rights principles such as participation, non-discrimination, equality, access to information, transparency, monitoring and accountability. In this context, he urges that technical assistance be provided to the Government where required.

87. The Special Rapporteur underscores the need to address the discrepancy between the many commendable policy initiatives in Mozambique and the country's capacity to implement them in practice. The Government and its bilateral and multilateral cooperation partners are encouraged to develop an integrated and coordinated approach in the health sector that is as comprehensive, simple and efficient as possible.

90. The Special Rapporteur encourages the Government of Mozambique to establish accountability mechanisms that bear upon health-related human rights, including the creation of a national human rights institution; a charter for the protection of patients' rights; and a statutory medical council responsible for regulating, registering, supporting and disciplining health professionals. He also encourages the Government to ratify ICESCR, which provides a form of international accountability.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, paras. 23 and 86):

23. [...] The Special Rapporteur urges the Government to continue its efforts to promote gender equality and tackle discrimination against women in the field of health, including through combating gender-based violence.

86. The commitment of the Government of Mozambique, together with its bilateral and multilateral funding partners, to addressing health challenges in Mozambique is clearly reflected in the prioritization of health in national poverty reduction strategies, as well as the development of sound policies, strategies and regulations in the health sector. However, in order to make these initiatives more sustainable and equitable the Special Rapporteur urges the Government to explicitly integrate human rights norms, including the right to health, into all national and international policy documents, with particular attention to key human rights principles such as participation, non-discrimination, equality, access to information, transparency, monitoring and accountability. In this context, he urges that technical assistance be provided to the Government where required.

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

## **IV. Administration of justice and the rule of law**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, para. 70):

70. [...] In line with the obligation of the Government, including its civil servants, to respect the right to health, and the obligation of the Government to protect the right to health from interference by third parties, the Special Rapporteur urges it to take all appropriate action to combat corruption in the health sector. He recommends that the Ministry of Health integrate the right to health - including the features of transparency and accountability - into all its policies and programmes, and publicly renew its commitment to remove all corruption from the health sector.

## **V. Fundamental freedoms**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, paras. 52, 81 and 82):

52. Thus, the Special Rapporteur recommends that the Ministry of Health establish an independent review of user fees, with technical support from WHO. The review should determine whether user fees impede access, especially for those living in poverty, women and other disadvantaged groups and, if so, whether user fees should be abolished across the board or retained

in some limited circumstances, such as the one indicated in the preceding paragraph. The review should include user fees for medical services and medicines. The review process should include the participation of disadvantaged groups. [...]

81. The Special Rapporteur encourages the Government to actively seek the engagement of civil society, including NGOs and marginalized groups such as women, children, the elderly, and people living with HIV/AIDS, in the health sector. For example, the meaningful participation of civil society should be a key feature of the review of PARPA.

82. The Special Rapporteur also recommends that the media be kept closely informed of government initiatives in the health sector. An independent media can help to enhance grass-roots participation and community responsibility, and will have a crucial role to play in any comprehensive and effective public information campaign on HIV/AIDS. The Government should regard the media as an ally in the struggle for a pro-poor health system and against corruption in the health sector and beyond. For its part, the media should provide accurate reporting of health issues.

## **VI. Economic and social rights**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, paras. 9, 30, 60, 64, 87-91):

9. While the Government of Mozambique has ratified many international instruments that provide for the right to health, it has not ratified the ICESCR. The Special Rapporteur urges the Government to ratify this Covenant as soon as possible.

30. The Special Rapporteur recommends that right to health and related human rights be mainstreamed into all national and international policy documents, and that technical assistance be provided where required. Policies based on human rights norms, including the right to health, are more likely to be effective, robust, sustainable, inclusive, equitable and meaningful - especially for the most vulnerable and disadvantaged members of society.

60. [...] The Special Rapporteur urges the Government of Mozambique and its funding partners to consider increasing the resources available under the Common Fund in order to address the urgent need for more health professionals, as well as for better terms and conditions of employment.

64. [...] Under international human rights law, States have primary responsibility to make resources available for the realization of the right to health. Thus, it is incumbent on the Treasury to make maximum resources available for improving health outcomes in the country. The Special Rapporteur also stresses the responsibility of the international community to provide assistance and cooperation in a manner supportive of Mozambique's efforts to implement its international human rights obligations.

87. The Special Rapporteur underscores the need to address the discrepancy between the many commendable policy initiatives in Mozambique and the country's capacity to implement them in practice. The Government and its bilateral and multilateral cooperation partners are encouraged to develop an integrated and coordinated approach in the health sector that is as comprehensive, simple and efficient as possible.

88. The Special Rapporteur recalls the central role played by health professionals in health service delivery. He underscores the need to increase significantly the number of health

professionals and improve their working terms and conditions, including levels of remuneration. Improving terms and conditions will increase the retention rate in the profession and reduce corruption.

89. The Special Rapporteur emphasizes that adequate resources must be allocated to the health and health-related sectors, and these resources should address the major right-to-health problems in the country.

90. The Special Rapporteur encourages the Government of Mozambique to establish accountability mechanisms that bear upon health-related human rights, including the creation of a national human rights institution; a charter for the protection of patients' rights; and a statutory medical council responsible for regulating, registering, supporting and disciplining health professionals. He also encourages the Government to ratify ICESCR, which provides a form of international accountability.

91. The Special Rapporteur encourages the Government to actively enhance community participation in the health sector, including by way of close collaboration with NGOs.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, paras. 23, 34, 44, 52, 63 and 75):

23. [...] The Special Rapporteur urges the Government to continue its efforts to promote gender equality and tackle discrimination against women in the field of health, including through combating gender-based violence.

34. [...] The Special Rapporteur recommends that greater attention be given to integrating human rights, in particular the human rights of vulnerable groups, into [the Action Plan for the Eradication of Absolute Poverty 2000-2004] PARPA during the review process. Particular attention should be paid to addressing inequalities between men and women, as well as the impact of poverty on vulnerable groups, such as children affected by HIV/AIDS.

44. [...] He urges the Government to enhance its efforts towards ensuring access to health services for rural populations, including through training and recruitment of more health professionals.

52. Thus, the Special Rapporteur recommends that the Ministry of Health establish an independent review of user fees, with technical support from WHO. The review should determine whether user fees impede access, especially for those living in poverty, women and other disadvantaged groups and, if so, whether user fees should be abolished across the board or retained in some limited circumstances, such as the one indicated in the preceding paragraph. The review should include user fees for medical services and medicines. The review process should include the participation of disadvantaged groups. The Special Rapporteur also recommends that the donor community in Mozambique takes a clear position on user fees in the health sector, taking into account (i) evidence of the impact of user fees on those living in poverty and (ii) the human rights obligations of the Government to deliver medical services without discrimination in law or fact. If



evidence confirms that user fees inhibit access to care, especially for those living in poverty and other disadvantaged groups, then prima facie their introduction or retention is inconsistent with the right to health.

63. [...] Particular attention must be paid to addressing the needs of rural populations. The Special Rapporteur also urges the Government of Mozambique and its funding partners to establish a Common Fund for water and sanitation services, along the lines of the Common Fund for the health sector.

75. [...] The Special Rapporteur emphasizes that it is incumbent on the IFIs to respect the domestic and international human rights obligations of the Government of Mozambique. They must not pursue policies, or encourage the Government to pursue policies, that are inconsistent with the Government's human rights obligations. The Special Rapporteur encourages the use of impact assessments by IFIs (and other actors) to determine the effect of policies or projects on people living in poverty or other marginalized groups, such as women, children, and people living with HIV/AIDS.

## **IX. The right to development and international cooperation**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.2, paras. 32, 35, 52, 64, 73-75, 77, 78 and 87):

32. The Special Rapporteur underscores the crucial importance of monitoring and accountability in relation to the right to health in Mozambique, both at the national level and with regard to international assistance and cooperation. National and international policies require effective mechanisms for ensuring transparency and accountability. For example, when discharging their responsibilities of international assistance and cooperation, donor Governments and institutions must be as transparent as possible. If a Mozambican stakeholder wishes to know how a developed State is contributing to the realization of the health-related Millennium Development Goals in Mozambique, this information should be readily available. Moreover, the reasons for partners' policies should be clear and accessible. Any major shifts in policy should be foreshadowed, explained and discussed. The Government, civil society and the people of Mozambique are entitled to this information and process; such transparency is one of the qualities that distinguishes the discharge of an international responsibility from an act of charity.

35. [...] Given international commitment to the Millennium Development Goals, including by the World Bank, the Special Rapporteur recommends that the Government integrates Millennium Development Goal targets into [the Action Plan for the Eradication of Absolute Poverty 2000-2004] PARPA when it is updated, and that the Government and the international community devote maximum resources to ensuring that the Millennium Development Goals become a reality.

52. [...] The Special Rapporteur also recommends that the donor community in Mozambique takes a clear position on user fees in the health sector, taking into account (i) evidence of the impact of user fees on those living in poverty and (ii) the human rights obligations of the Government to deliver medical services without discrimination in law or fact. If evidence confirms that user fees inhibit access to care, especially for those living in poverty and other disadvantaged groups, then prima facie their introduction or retention is inconsistent with the right to health.

64. [...] Under international human rights law, States have primary responsibility to make resources available for the realization of the right to health. Thus, it is incumbent on the Treasury to make maximum resources available for improving health outcomes in the country. The Special

Rapporteur also stresses the responsibility of the international community to provide assistance and cooperation in a manner supportive of Mozambique's efforts to implement its international human rights obligations.

73. Accordingly, the Special Rapporteur recommends that all bilateral and multilateral cooperation partners develop an integrated and coordinated approach in the health sector that is as comprehensive, simple and efficient as possible. In particular, he recommends that USAID and Japan join the Common Fund. The need for greater integration and coordination is not confined to the health sector as represented by the Ministry of Health and reflected in the memorandum of understanding of November 2003. For example, a comprehensive memorandum of understanding in relation to the Ministry of Public Works and Housing (whose responsibilities bear closely upon the health of the people of Mozambique) should be negotiated as soon as possible. Bilateral and multilateral partners should ensure that all contributions made under the Common Fund, or other arrangements, are paid promptly according to the agreed schedule.

74. In addition to the contribution made by financial donors, the vital role played by the United Nations system in Mozambique, including through the provision of technical cooperation and assistance, must be recognized, supported and enhanced.

75. [...] The Special Rapporteur emphasizes that it is incumbent on the IFIs to respect the domestic and international human rights obligations of the Government of Mozambique. They must not pursue policies, or encourage the Government to pursue policies, that are inconsistent with the Government's human rights obligations. The Special Rapporteur encourages the use of impact assessments by IFIs (and other actors) to determine the effect of policies or projects on people living in poverty or other marginalized groups, such as women, children, and people living with HIV/AIDS.

77. [...] The Special Rapporteur recommends that when the IFIs assess and make recommendations on Mozambique's country-owned strategies, including Joint Staff Assessments, they take into consideration Mozambique's national and international human rights obligations.

78. [...] The Special Rapporteur is concerned at this limited support and suggests that the World Bank include a greater focus on assistance to the health sector. He encourages the World Bank to ensure that its second PRSC gives due attention to the health sector, in addition to other sectors vital to poverty reduction, human rights and health, such as water and sanitation.

87. The Special Rapporteur underscores the need to address the discrepancy between the many commendable policy initiatives in Mozambique and the country's capacity to implement them in practice. The Government and its bilateral and multilateral cooperation partners are encouraged to develop an integrated and coordinated approach in the health sector that is as comprehensive, simple and efficient as possible.

## **X. Comments from the Government**<sup>30</sup>

n/a

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<sup>30</sup> As published as official documents of the CHR.

## MYANMAR

### Introduction

The Special Rapporteur on the situation of human rights in Myanmar is submitting his report to the Commission on Human Rights (please refer to document E/CN.4/2005/36).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2005/36, paras. 53 to 55 and 61 to 64).

53. In the view of the Special Rapporteur, the pronouncements made and action taken by the current leadership in Myanmar do not yet appear to signal any new policy direction in respect of the National Convention process. He will continue to follow closely the process and will wait for its eventual resumption before evaluating the impact of the recent leadership changes on the future of the road map. The international community should also continue to urge Myanmar to take positive steps towards national reconciliation and democratization, with the full and meaningful involvement of all the parties concerned. It would, however, be unfair to refuse to acknowledge progress because the changes do not meet a maximalist scenario. While noting the slow progress in Myanmar's evolution towards a democratic State with full provision for the enjoyment of human rights, the Special Rapporteur hopes that it will continue in a steady and irrevocable manner.

54. The National Convention could promote further political moves towards the democratization envisaged in the road map set out by the Government. While the Special Rapporteur duly acknowledges the efforts exerted and achievements realized to date, he maintains that additional requirements are necessary if the objectives of the road map are to be fulfilled.

55. The Special Rapporteur has already articulated his concerns regarding the proceedings of and the inclusiveness of and participation at the reconvened National Convention (E/CN.4/2004/33, paras. 27-36 and A/59/311, paras. 7-16) and believes there is still scope for some adjustments to be made that would transform its next session into a genuine forum for achieving national reconciliation and political transition, with the participation of key representatives from all legitimate organizations. The Special Rapporteur believes that in order to bring about a more sustainable solution to the political process in the country, credible endeavours to ensure that NLD and other parties join the National Convention process should be made by all actors. He also believes that the process under way in Myanmar towards democratization should not be delayed, given that only a genuinely democratic system of governance, in which the concerns of different groups can be addressed, can lead to understanding, stability and progress for the country.

61. The Special Rapporteur underlines the fact that the State apparatus and its agents will not just disappear after the political transition has been completed. As was the case in many democratic transitions in the twentieth century, even subsequent to direct military rule, many State agents and bureaucrats with experience in running the country, including judges, public prosecutors and army officials, will remain in office in order to prevent instability. In other South-East Asian countries, transitions gradually led to improvements in participatory democracy, elections, labour standards and human rights. The Special Rapporteur believes that it would be absurd for the international community to wait for the end of the political transition to

cooperate on initiatives aimed at improving the lives of vulnerable persons in Myanmar and to hold the population hostage until the completion of the democratization process.

62. Many mutually reinforcing reforms could be considered simultaneously in order to promote political reform, including civil service reform; privatization and enhanced efficiency in public enterprises; anti-corruption measures; addressing the problem of the black economic; reforms in the education sector; improvements in health care, including the issue of access; the demobilization and reintegration into productive roles in society of former combatants; environmental protection; and the provision of safety nets for those who are likely to be left behind in the process of moving towards a market-oriented economic system, including poor persons, women, youth, older persons, ethnic minorities and persons with disabilities.

63. Priority should also be given to the ratification of the core human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

64. The Special Rapporteur is keen to pursue his cooperation with Myanmar and hopes that the new Government will give favourable consideration to his resumption of country visits.

## **II. Non-discrimination and equality before the law**

n/a

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

## **IV. Administration of justice and the rule of law**

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2005/36, para. 56).

56. Given that a sizeable number of political prisoners still remain in prison, with many of them serving long terms, the Special Rapporteur, while welcoming the recent release by the Government of some such prisoners, stresses yet again that only the full and unconditional release of all political prisoners will pave the way for national reconciliation and the rule of law. The Special Rapporteur has noted in his previous reports that it would be extremely difficult or even impossible to launch a process of change without releasing political prisoners; discontinuing the imprisonment of people for merely speaking their minds or subjecting them to summary trials without providing legal assistance or the most basic elements of the due process of law.

## **V. Fundamental freedoms**

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2005/36, para. 57).

57. The Special Rapporteur also wishes to reiterate that the restoration of freedom for political parties and ceasefire partners to operate and pursue peaceful political activity is a further

prerequisite for a credible process of national reconciliation and political transition. Democratization cannot emerge from a unilaterally controlled, restrictive environment.

## **VII. Economic and social rights**

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2005/36, paras. 59 and 60).

59. The Special Rapporteur remains convinced that there is an urgent need to re-establish a common focus for the various United Nations and international community actors and agencies and to coordinate all political, humanitarian and human rights initiatives. It is more vital than ever before that all States, particularly those in the region, place serious emphasis on continuous dialogue and negotiation with the Government of Myanmar. Notwithstanding the recent changes in the Myanmar Government, the Special Rapporteur is of the view that all players should also continue to work together on such non-political and/or social issues as are covered by assistance programmes with funding from the Global Fund, including HIV/AIDS prevention.

60. There is a pressing need in Myanmar to embark on a process of structured consultations on substantial policy issues. The normalization of political life would proceed more rapidly if bolder steps were taken with the assistance of the international community and multilateral organizations. With respect to economic and social rights, there are areas of concern which could be addressed by the Government, economists, political parties and other players, with assistance and advice from the United Nations, international agencies and neighbouring States, thereby paving the way for the integration of Myanmar into international financial and economic structures.

## **VIII. Cultural rights**

n/a

## **IX. Situation of specific groups**

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2005/36, para. 58).

58. If the Government sincerely wishes to promote the cause of peace, development and justice in ethnic minority areas affected by armed conflict, it must look seriously into allegations of violations against civilians living in those areas. The Special Rapporteur believes that it is in the best interests of the Government to establish efficient mechanisms for the accountability of army personnel for alleged human rights violations, with a view to ensuring the protection of the civilian population. Allegations must be investigated, and those responsible for violations must be held accountable, prosecuted and judged. It is therefore important that the United Nations and the international community should deal consistently with human rights violations: there must not be one set of standards or requirements for State agents and another for armed groups. In his reports, the Special Rapporteur has always demanded that State agents and armed groups should be held equally accountable. In that regard, the issue of impunity relating to the events of 30 May 2003 in Depayin must also be adequately addressed and those who are found to be responsible brought to justice.

**X. Comments from the Government** <sup>31</sup>

n/a

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<sup>31</sup> As published as official documents of the CHR.

## NEPAL

### Introduction

During the period under review, the Working Group on Enforced or involuntary disappearances visited the country (please refer to document E/CN.4/2005/65/Add.1).

### I. Institutional and legal framework for the promotion and protection of human rights

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65/Add.1, paras. 33 to 35, 40, 43, 44, 50, 52, 53 and 55)

33. (...) Nonetheless, the Working Group recommends that:

As soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance.

34. (...) As soon as parliament sits again, the Working Group recommends that:

The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation.

35. (...) The Working Group recommends that:

The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and furthermore, that the Judge Advocate General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians.

40. (...) The Working Group therefore recommends that:

The Government of Nepal and the security forces of Nepal ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarijal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees.

43. The Working Group recommends that:

The Supreme Court consider a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court.

44. Although it is sometimes said that judges in Nepal are frightened to challenge the army, the Working Group was reminded that the judiciary, and especially the Supreme Court, has worked hard to carve out an independent role since the establishment of democracy. That role is more important now than ever before for the people of Nepal. It is also said that some judges may be afraid of reprisals by the Maoists for actions taken in court. If that is so, it may be wise to consider the creation of so-called “faceless courts”, as an exceptional measure until a political accommodation is reached to end, or at least significantly weaken, the insurgency.

50. The Working Group recommends that:  
The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal.

52. (...) The Working Group recommends that:  
The Government continue to make every effort to strengthen the role of the National Human Rights Commission and to facilitate its work; and that, in addition that the Government ensure the continuity of the Commission even in the absence of the regular parliamentary appointments process.

53. (...) The Working Group recommends that:  
The National Human Rights Commission be given unhindered access to all places of detention, including all army barracks, without prior notification or permission.

55. (...) The Working Group recommends that:  
The United Nations Department of Peacekeeping Operations evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces, and seek the cooperation of the Office of the High Commissioner for Human Rights to review progress.

## **II. Non-discrimination and equality before the law**

n/a

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65/Add.1, paras. 50, 51)

50. (...) The Working Group recommends that:  
The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal.

51. (...) The Working Group recommends that:  
The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law.

## **IV. Administration of justice and the rule of law**

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65/Add.1, paras. 34, 35, 40, 43 and 44)

34. (...) As soon as parliament sits again, the Working Group recommends that:  
The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation.



35. (...) The Working Group recommends that:

The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and furthermore, that the Judge Advocate General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians.

40. (...) The Working Group therefore recommends that:

The Government of Nepal and the security forces of Nepal ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarijal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees.

43. (...) The Working Group recommends that:

The Supreme Court consider a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court.

44. Although it is sometimes said that judges in Nepal are frightened to challenge the army, the Working Group was reminded that the judiciary, and especially the Supreme Court, has worked hard to carve out an independent role since the establishment of democracy. That role is more important now than ever before for the people of Nepal. It is also said that some judges may be afraid of reprisals by the Maoists for actions taken in court. If that is so, it may be wise to consider the creation of so-called “faceless courts”, as an exceptional measure until a political accommodation is reached to end, or at least significantly weaken, the insurgency.

## **V. Fundamental freedoms**

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65/Add.1, paras. 50 and 51)

50. (...) The Working Group recommends that:

The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal.

51. (...) The Working Group recommends that:

The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law.

## **VI. Economic and social rights**

n/a

## **VII. Cultural rights**

n/a

**VIII. Situation of specific groups**

n/a

**IX. The right to development and international cooperation**

n/a

**X. Comments from the Government**<sup>32</sup>

n/a

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<sup>32</sup> As published as official documents of the CHR.

## NICARAGUA

### Introduction

Au cours de la période concernée, le Rapporteur Spécial sur les formes contemporaines de racisme a visité le pays (veuillez vous référer au document E/CN.4/2005/18/Add.6).

### I. Cadre institutionnel et légal pour la promotion et la protection des droits de l'homme

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add.6. paras. 24 (b) et 25)

24. (b) Le Gouvernement nicaraguayen devrait s'engager de manière plus ferme dans la lutte contre la discrimination raciale, notamment par l'élaboration démocratique, avec la participation des communautés concernées, d'un programme d'action global contre le racisme et la discrimination raciale et pour la construction d'une société multiculturelle, égalitaire, démocratique et interactive qui s'inspirerait de la Déclaration et du Programme d'action de Durban. Ce programme, tout en tenant compte des avancées du multiculturalisme, devrait comporter des mesures effectives pour la représentation des communautés ethniques et autochtones au sein des organes de l'État, pour s'attaquer aux conséquences profondes de la discrimination raciale dans les domaines de l'éducation, de la santé et du logement; un programme de discrimination positive en faveur des populations autochtones et afro-nicaraguayenne devrait constituer le noyau central de ce programme d'action global.

25. La lutte contre le racisme et la discrimination raciale doit tenir compte de sa dimension régionale en Amérique centrale dont les sociétés partagent non seulement des similarités démographiques et ethnoculturelles mais surtout un héritage historique de racisme et de discrimination, amplifié par la violence politique moderne. Les pays de cette région sont également marqués par une dynamique de mouvements de populations qui subissent à des degrés divers des pratiques de discrimination dans les différents pays. Le Rapporteur spécial recommande en conséquence que l'Organisation des États américains (OEA), notamment la Commission interaméricaine des droits de l'homme, accorde une place centrale dans la construction de la paix à l'éradication en profondeur du racisme et de la discrimination raciale dans la perspective de la construction d'un multiculturalisme régional, démocratique, égalitaire et interactif. L'OEA devrait appuyer les efforts des États de l'Amérique centrale par des études sur les constructions identitaires multiethniques et sur les manifestations des phénomènes ainsi qu'une assistance pour l'élaboration de législations nationales et régionales coordonnées, le renforcement des institutions de protection des droits de l'homme et de la société civile, la révision des programmes et systèmes éducatifs et médiatiques.

### II. Non-discrimination and equality before the law

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add.6. paras. 24 (a) et (f))

24. (a) Compte tenu des perceptions des populations qui s'estiment discriminées, le Gouvernement devrait au niveau le plus élevé reconnaître solennellement l'existence de la discrimination raciale et s'engager à la combattre; il s'agirait là d'un signal fort, de nature morale et politique, en direction des populations concernées et de l'ensemble du pays.

(f) Le Gouvernement devrait initier le processus d'adhésion à la Convention n° 169 de l'OIT relative aux peuples indigènes et tribaux afin de mieux garantir les droits fonciers de ces populations; la loi sur le régime de la propriété communale doit faire l'objet

d'une mise en œuvre effective, notamment par l'adoption d'une démarcation effective des terres communales, en dotant la Commission intersectorielle de démarcation et d'attribution des titres des moyens humains et financiers requis.

### **III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne; le droit à l'intégrité physique et morale**

n/a

### **IV. Administration de la justice et l'état de droit**

n/a

### **V. Libertés fondamentales**

n/a

### **VI. Droits économiques et sociaux**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add.6. para. 24 (e))

24. (e) Le Gouvernement devrait prendre les mesures nécessaires pour accélérer le processus de démarcation des terres communales et restituer aux populations lésées, dont celles de Litelpaneca, leurs droits de propriété.

### **VII. Droits culturels**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add.6. para. 24 (g) et 26)

24. (g) Le Programme d'éducation interculturel bilingue doit faire l'objet d'une mise en œuvre effective, notamment en ce qui concerne ses moyens pédagogiques et humains, par l'allocation des ressources nécessaires. Le Parlement doit, dans ce contexte, adopter les mesures législatives requises pour le bon fonctionnement du Système éducatif autonome régional (SEAR) élaboré par les conseils régionaux de l'Atlantique Nord et Sud.

26. L'OEA devrait également promouvoir le développement d'un tourisme interculturel articulé autour des axes suivants : l'existence d'un patrimoine physique commun, la vitalité des pratiques et expressions culturelles et spirituelles authentiques et leurs interactions profondes dans le temps et dans l'espace. Le tourisme interculturel peut permettre à la fois de combattre la discrimination par la réhabilitation des identités historiquement niées ou bafouées, d'éviter la folklorisation des cultures inhérentes aux pratiques modernes du tourisme de masse, et de promouvoir le lien fondamental entre la terre et la culture, « terres-sources », au cœur des revendications des communautés autochtones et d'origine africaine.

### **VIII. Situation des groupes spécifiques**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add.6. para. 24 (c))

24. (c) La lutte contre le racisme et la discrimination raciale doit s'articuler autour d'une politique d'information en direction des populations discriminées, autant sur leurs droits et voies

de recours que sur les politiques et programmes du Gouvernement; dans ce contexte, les populations doivent être informées des engagements internationaux du Gouvernement dans le domaine des droits de l'homme et de la lutte contre le racisme, par la diffusion large des instruments internationaux pertinents, du Document final de Durban ainsi que des rapports périodiques soumis par le Gouvernement au Comité pour l'élimination de la discrimination raciale (CERD); s'agissant des médias et de leur impact sur la formation des perceptions, le Rapporteur spécial recommande que les médias adoptent un code de conduite et fassent en sorte que tant dans leurs programmes que dans leurs structures de direction et de gestion soit reflétée la diversité ethnique du Nicaragua; l'État et les médias devraient favoriser de manière vigoureuse la création de médias locaux et communautaires.

## **IX. Le droit au développement et la coopération internationale**

Rapporteur spécial sur le racisme (E/CN.4/2005/18/Add.6. para. 24 (d))

24. (d) Les agences spécialisées du Système des Nations Unies devraient accorder une place centrale à la lutte contre le racisme et la discrimination raciale dans leurs projets et programmes au Nicaragua et apporter leur concours à l'élaboration du programme d'action global contre la discrimination; un appui particulier devrait être fourni aux projets gouvernementaux contribuant au développement des régions de l'Atlantique; les domaines de compétence des institutions et organisations du Système des Nations Unies sont, en effet, les vecteurs sociaux de la discrimination et du racisme : travail, environnement, terres, éducation, santé, culture, etc.

## **X. Comments from the Government**<sup>33</sup>

n/a

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<sup>33</sup> As published as official documents of the CHR.

## PARAGUAY

### Introduction

During the period under review, the Special Rapporteur on the sale of children, child prostitution and child pornography visited the country (please refer to document E/CN.4/2005/78/Add.1).

### I. Institutional and legal framework for the promotion and protection of human rights:

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, paras. 113, 115, 117, 118 and 124)

113. Priority should be given to the full implementation of the Code on Children and Young Persons and, in particular, the national system for the comprehensive protection of children and young persons. The Secretariat for Children should make the setting up and strengthening of CODENIs, and the transfer of resources from central government to town councils to fund them, one of its priorities. As regards the system of justice, the implementation of the Code entails giving full powers to the special courts and training police officers to deal with children's issues.

115. Paraguayan institutions need to be strengthened so that they can coordinate their approach to complex problems such as the sexual exploitation of children and young persons. It is recommended that the Government should promote the creation of inter-agency coordination bodies, building on and replicating the experience in the triple-border region.

117. In the area of legislation, the Special Rapporteur on the sale of children, child prostitution and child pornography recommends that:

- (a) Pornography should be classed as an offence, as provided for in the bill prepared by the National Secretariat for Children and Young Persons;
- (b) Penalties for sexual exploitation offences should be increased;
- (c) Criminal legislation in the MERCOSUR countries should be harmonized; and
- (d) A tripartite agreement on mutual legal assistance in criminal matters in the triple-border region should be concluded.

118. Appropriate mechanisms should be set up to ensure that the national plan for the prevention and eradication of the sexual exploitation of children and young persons is implemented. It is suggested that success indicators should be defined, so that the impact of action under the plan can be measured.

124. Teachers are key players because they can work from school with children and young persons and their families. They have a strategic role to play in preventing and detecting cases of sexual abuse and in forwarding complaints, including those related to sexual exploitation, to the appropriate authorities. It is recommended that teachers throughout the country should receive training like that provided under the programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region and the project to provide comprehensive care for children doing domestic work in other people's homes in Greater Asunción.

### II. Non-discrimination and equality before the law

n/a

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity:**

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, paras. 119, 120, 122, 125 and 127)

119. The Special Rapporteur urges the Government to investigate and crack down on police corruption and inaction. It is also recommended that a special unit should be set up within the police force to deal with family matters, and that police officers should be trained in how to deal with cases of sexual exploitation.

120. The Special Rapporteur recommends that the system for checking children who cross the border should be improved. He also recommends that a plan should be drawn up on cooperation between Paraguay, Brazil and Argentina in the field of social policies for the promotion and protection of children and young persons.

122. Care for the victims of sexual exploitation is a priority area. It is recommended that special centres should be set up for victims, along the same lines as existing projects, which need to be strengthened.

125. Recognizing the efforts and achievements made by Paraguay to put a stop to trafficking in babies for intercountry adoptions, the Special Rapporteur agrees with the decision not to open up the country to such adoptions and recommends that the Adoption Centre should be strengthened to enable it to do its work effectively and ensure that custody is not abused for the purposes of adoption. This is the best way to guarantee the legality of the adoption process.

127. With regard to young persons in prison, the Special Rapporteur urges the Government to comply with the relevant international standards and to ensure that the young persons are not imprisoned alongside adult prisoners but properly separated from them. In addition, more educational alternatives to the deprivation of liberty and more rehabilitation programmes should be systematically introduced.

### **IV. Administration of justice and the rule of law:**

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, para. 116)

116. The establishment of human rights units in various public institutions, including the justice system, is a creative way of integrating a rights-based approach and should be encouraged.

### **V. Fundamental freedoms:**

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, para. 121)

121. Possession of an identity is a fundamental requirement for the enjoyment of human rights. The Special Rapporteur urges the Government to take the necessary steps to ensure that all Paraguayans have a birth certificate and that registry offices provide a reliable free service. In particular, the Special Rapporteur on the sale of children, child prostitution and child pornography recommends that:

- (a) Registry offices should be computerized as part of the modernization project already under way;
- (b) Registry units should be set up in hospitals to make it easier for children born in hospital to be registered;
- (c) Mobile registry units should be set up to serve the most remote communities; and
- (d) The mass birth-registration programmes overseen by the office of the Director-General of the Registry Office should be continued.

## **VI. Economic and social rights:**

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, paras. 114 and 123)

114. The State must assume its responsibility for tackling social issues, by introducing far-reaching programmes to reduce poverty and social exclusion. The Social Expenditure Project is a positive step in this direction. The State must also lead the fight against organized crime, not only with policing measures but also with social policies and programmes that guarantee basic welfare standards and the protection of the rights of children and young persons. If the State does not take a more proactive role in the defence of the most vulnerable groups, other forces could jeopardize democracy.

123. The gradual eradication of the system of servant girls must be a priority objective, to be achieved through education, preventive programmes and campaigns to raise awareness of children's rights.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups:**

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, para. 126)

126. The Special Rapporteur suggests that sustainable development programmes should be implemented for indigenous communities. In particular, he recommends that the communities threatened by landowners should be identified and protected. The civil registration of remote communities by means of mobile registry units and the establishment of schools close to the communities would be further steps in the right direction.

## **IX. The right to development and international cooperation:**

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.1, paras. 128 and 129)

128. It is recommended that the Government should seek technical cooperation from the United Nations country team in the implementation of these recommendations. In particular, the country team could provide technical assistance in programmes to eradicate the exploitation of domestic workers, the computerization of registry offices, institution-building programmes and programmes promoting social dialogue, the establishment of centres for the victims of sexual exploitation and the training of their staff, awareness-raising campaigns and mechanisms to monitor the implementation of social policy.



129. It is recommended that international donors should invest in the promotion of children's rights through the comprehensive protection system provided for by the Code on Children and Young Persons. In particular, it is recommended that they should support the computerization of registry offices. The programme on the prevention and elimination of the commercial sexual exploitation of children and young persons in the triple-border region could be replicated in other critical areas of Paraguay, such as the area around Pedro Juan Caballero.

**X. Comments by the Government**<sup>34</sup>

n/a

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<sup>34</sup> As published as official documents of the CHR.

## PERU

### Introduction

During the period under review, the following special procedures visited the country:

- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (please refer to document E/CN.4/2005/51/Add.3);
- The Special Rapporteur on the human rights of migrants (please refer to document E/CN.4/2005/85/Add.4).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 10, 28, 44, 45, 55-59, 71 and 83):

10. The Special Rapporteur understands that the Government has begun to prepare a national human rights plan of action, as anticipated by the Vienna Declaration and Programme of Action in 1993. The preparation of the plan of action - and, in due course, the implementation of the plan itself - must be provided with adequate financial support. In this regard, the Special Rapporteur recommends that the Government approach the OHCHR Technical Cooperation Programme for assistance, not only in relation to the preparation of the plan, but also its implementation.

28. The Special Rapporteur's primary recommendation is that the Government, in cooperation with all stakeholders, formulate a comprehensive health policy and strategy, underpinned by the right to health, that is specifically designed to address inequity, inequality, discrimination and the situation of those living in poverty (in short, a "pro-poor equity-based health policy"). The recommendation anticipates both a health policy and strategy, i.e. not only identification of the goals, but also the measures by which the goals are to be reached.

44. [...] The Special Rapporteur recommends that human rights education be provided to health professionals, including in training at medical schools, and that the Government give attention to improving the terms and conditions of all health professionals.

45. The Special Rapporteur recommends that the law provide full recognition of the rights of health system users. The law should ensure that independent and accessible accountability mechanisms (courts, national ombuds or other) can consider complaints by health system users who allege that their human rights have been violated in care. The Special Rapporteur is concerned that a new draft law on patients' rights overemphasizes the individual responsibilities of health professionals without taking due account of institutional and structural factors that may contribute to causing harm to patients.

55. Promoting health must involve effective community action in setting priorities, making decisions, and planning, implementing and evaluating strategies to achieve better health. All individuals and groups have the right to participate in decision-making processes that may affect their health or development. The Special Rapporteur recommends that the Government give urgent attention to fulfilling this right to participation at all stages of development or mining projects, including planning, development, implementation and monitoring.

56. The Special Rapporteur recommends that the Government ensure that independent rights-based environmental and social impact assessments are conducted prior to the setting up of all mining or other industrial projects that may have harmful impacts on the right to health.

57. Any alleged victim of a violation of the right to health who has suffered harm should have access to effective judicial or other appropriate remedies at both national and international levels, as well as adequate reparation in suitable cases.

58. The Special Rapporteur urges the Government to appoint a high-level, wide-ranging, independent public inquiry to investigate the situation in Callao and make recommendations as a matter of urgency. The inquiry should take into account all relevant national and international law, including human rights, and consider all reasonable solutions, including the closure and removal of the facilities to a different location.

59. The Special Rapporteur also urges the Government to comply with the precautionary measures requested by the Inter-American Commission in the case of San Mateo.

71. The Special Rapporteur recommends that:

(a) Civil society, in particular people with mental disabilities, and their families, be involved at all stages in the development and implementation of mental health policy, legislation, programmes and strategies; [...]

(e) The human rights of persons with mental disabilities be fully respected within health-care services and facilities. Human rights training should be provided to all professionals who regularly interact with the mental health system. Independent monitoring and accountability mechanisms for mental health services, including accessible, transparent and effective complaints mechanisms for patients, must also be implemented. A review board should undertake regular inspections of mental health facilities, including patient interviews. Monitoring mechanisms should also include an independent, regular and systematic review of cases of involuntary admission and treatment, which should also be subject to strict procedural safeguards; [...]

83. [...] (a) The Government should ensure that all legislation, policies, programmes and other initiatives are consistent with Peru's international and regional human rights obligations, domestic human rights law, commitments related to the right to health made at recent international conferences, and the recommendations adopted by the Permanent Forum on Indigenous Issues, in particular those related to their right to health;

(b) The Government should enhance intersectoral coordination between ministries in the development and implementation of policies and programmes relating to (i) health and (ii) human rights;

(c) Whenever appropriate, the offices of the United Nations and the Organization of American States, including PAHO/WHO, should be called upon to give technical assistance in relation to health and human rights legislation, policies and programmes.

#### Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.4, paras. 71 to 77)

71. El Gobierno ha tomado conciencia de la dimensión del fenómeno y de los problemas que plantea la salida masiva de sus ciudadanos, muchos de ellos en condiciones de irregularidad. Por ello, la Relatora Especial alienta al Gobierno a concluir el procedimiento de ratificación de la Convención Internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares, y considerar la ratificación de los Convenios Nos. 97 y 143 de la OIT.

72. La Relatora Especial alienta también al Ministerio de Relaciones Exteriores a continuar impulsando acuerdos bilaterales en materia migratoria y la ejecución de las actividades previstas a corto y medio plazo. La Relatora Especial alienta al Estado peruano a tener una presencia activa y defender los derechos de sus emigrantes en el marco de los procesos consultivos regionales e internacionales de gestión de la migración.

73. La condición migratoria irregular en la que se encuentran muchos peruanos en el exterior se traduce en una limitación importante en el ejercicio de sus derechos. La Relatora Especial considera que la discriminación y los abusos que sufren a los emigrantes peruanos deben ser combatidos con firmeza desde las instituciones del Estado peruano. La Relatora Especial alienta al Gobierno a continuar trabajando en la reforma de su política de protección, asistencia y promoción de las comunidades peruanas en el exterior, llevándola a la práctica a través de sus representaciones diplomáticas y consulares y reforzando la imagen del cónsul como servidor público. Las políticas migratorias pueden ser enriquecidas con las aportaciones de interlocutores sociales, ONG y académicos en la materia, entre otros.

74. Es necesario que las autoridades consulares peruanas tengan la formación adecuada para poder garantizar la protección de los derechos humanos de sus connacionales en el exterior, incluidos sus derechos laborales, independientemente de su situación migratoria. El Ministerio de Relaciones Exteriores debería otorgar a la función consular la importancia y relevancia que se merece y adecuar los planes de estudio de la Academia Diplomática a la realidad peruana. El Ministerio debería adoptar las medidas que considere necesarias para que las representaciones consulares cuenten con los recursos humanos y materiales necesarios que garanticen el acceso a una protección consular efectiva. Este Ministerio debería considerar la existencia de agregados laborales en sus representaciones consulares que asistan y protejan los derechos laborales de los trabajadores migrantes y fronterizos peruanos.

75. La Relatora Especial considera que los consejos de consulta son un paso importante en la construcción de la nueva política de protección, asistencia y promoción de las comunidades peruanas en el exterior. La Relatora Especial propone la revisión de los preceptos del ROF que planteen problemas en su aplicación, a fin de aprovechar al máximo las oportunidades que ofrecen estos importantes espacios de diálogo.

76. La Relatora Especial acoge con satisfacción las iniciativas del Ministerio de Relaciones Exteriores y la Defensoría dirigidas a la protección de los emigrantes peruanos, y espera que contribuyan a corregir y erradicar el trato discriminatorio en las representaciones consulares peruanas. Reconoce los esfuerzos de ambas instituciones en la promoción y protección de los derechos humanos de los emigrantes peruanos.

77. El Instrumento Andino de Migraciones parece el marco adecuado para encontrar soluciones a los problemas que genera en la actualidad la presión migratoria en la frontera con el Ecuador.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 28, 74, 75, 77, 81 and 82):

28. The Special Rapporteur's primary recommendation is that the Government, in cooperation with all stakeholders, formulate a comprehensive health policy and strategy, underpinned by the right to health, that is specifically designed to address inequity, inequality, discrimination and the situation of those living in poverty (in short, a "pro-poor equity-based health policy"). The

recommendation anticipates both a health policy and strategy, i.e. not only identification of the goals, but also the measures by which the goals are to be reached.

74. He notes, however, the urgent need for the development of a comprehensive, intersectoral policy on sexual and reproductive health which focuses on the health needs of women, in particular those that are socially and economically marginalized. In particular, sexual and reproductive health-care laws, policies and programmes should be designed to reach women living in poverty, indigenous peoples and rural populations, with full respect for their human rights. Legislation to promote non-discriminatory access to sexual and reproductive health services should be developed, promoted and implemented. Civil society and women's groups should be involved in the development of policy, legislation, programmes and strategies in relation to sexual and reproductive health.

75. Similarly, the Special Rapporteur recommends that a comprehensive, intersectoral policy on sexual and reproductive health should be developed for - and with the participation of - adolescents. The policy should be grounded in international human rights law and should recognize, in particular, the right of adolescents to access information, education and user-friendly sexual and reproductive health services, including on family planning and contraceptives, risks related to early pregnancy, and prevention of sexually transmitted infections such as HIV/AIDS. The right of adolescents to privacy, confidentiality and informed consent should be protected.

77. [...] The Special Rapporteur welcomes the development of a comprehensive national policy on HIV/AIDS and urges that strategies for implementing the policy explicitly address gender inequalities, stigma and discrimination; provide comprehensive sexual and reproductive health information, education and services to young people; and ensure access to voluntary testing, counselling and treatment for sexually transmitted infections, including HIV/AIDS.

81. The Special Rapporteur endorses the recommendations of CERD (ibid., sect. D), and he also encourages the Government to implement recommendations bearing on the right to health adopted by the Permanent Forum on Indigenous Issues at its third session (see E/2004/43 - E/C.19/2003/23). The Special Rapporteur urges the Government and other actors to make every effort to ensure that:

- Research is carried out into the economic, cultural, political and linguistic obstacles to the enjoyment of the right to health faced by indigenous peoples and ethnic groups in Peru. This research should involve the active participation of representatives, including women, from Peru's indigenous and ethnic minority communities, and should serve as the basis for developing policies and programmes to address these obstacles;
- Whenever possible, all health data are disaggregated by ethnicity and socio-economic status;
- All health policies, programmes and projects specifically take into account the needs, cultures and traditions of, as well as discrimination affecting, different ethnic groups, and indigenous women;
- All affected ethnic groups participate actively and in an informed manner whenever health policies, programmes and projects are formulated and implemented;
- All health professionals are provided with training to ensure that they are aware of, and sensitive to, issues of ethnicity, culture and gender;
- So far as possible, the health facilities, programmes and projects that are in - or serve - a community are available in the mother tongue of most people in that community;
- Central and regional government, teaching institutions, health professional associations and others actively devise and implement strategies that encourage individuals from all ethnic groups to become health professionals. These strategies should include measures to increase the

ethnic diversity of the student body attending existing training programmes. However, in addition, new training courses should be devised for - and by - indigenous and other non-dominant ethnic groups. These courses should include training in the medical traditions and practices of the groups concerned. In this way, these courses will serve several extremely important purposes. Not least, they will help to preserve the invaluable and increasingly threatened traditional knowledge of indigenous peoples.

82. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should be encouraged to visit Peru.

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.4, paras. 78 to 81)

78. Los esfuerzos del Estado peruano resultan aún insuficientes para hacer frente al tráfico ilícito de migrantes y la trata de seres humanos. Es necesaria una estructura institucional capaz de luchar contra estas formas de criminalidad y asegurar el enjuiciamiento penal de los autores.

79. La Relatora Especial constató la profesionalidad de los altos cargos de la DIGEMIN y considera necesario reforzar los recursos humanos y materiales de esta Dirección para mejorar así sus actividades de control migratorio, detección de pasaportes falsos y cursos de formación permanente para su personal funcionario. La Relatora Especial insta al Registro Nacional de Identificación del Estado Civil a continuar sus iniciativas para erradicar la indocumentación de parte de la población, incluidos los desplazados internos y sus hijos. La Relatora Especial considera importante el desarrollo de un sistema de documentación para los menores de edad. La actividad del Registro Nacional de Identificación que, según la información proporcionada por el Gobierno, está en la fase inicial de documentar a todos los niños del Perú con el documento nacional de identidad, va en esta dirección.

80. La definición internacional de trata de seres humanos incluye además de la prostitución ajena u otras formas de explotación sexual, los trabajos o servicios forzados, la esclavitud o las prácticas análogas a la esclavitud, la servidumbre y la extracción de órganos. Por ello, recomienda adecuar el Código Penal a la definición de trata contenida en el Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente de mujeres y niños. El Grupo de Trabajo sobre la Trata debería recibir información periódica desde los puntos en los que se observa este tipo de criminalidad y desarrollar programas de protección y apoyo a las víctimas. La Relatora Especial considera que la presencia de mujeres en el Grupo de Trabajo asegurará la equidad de géneros.

81. La Relatora Especial quisiera expresar su profunda preocupación por las graves condiciones carcelarias en las que se encuentran los extranjeros en el Perú, que en su opinión violan principios y normas de derechos humanos en la materia. Es imperativo que se suministren los medicamentos esenciales y prescritos para enfermedades importantes y primeros auxilios, una asistencia letrada eficaz, adecuación del tendido eléctrico de los centros penitenciarios y existencia de extintores en los pabellones. Las representaciones consulares deberían asistir y proteger los derechos de sus connacionales privados de libertad en el Perú y desarrollar programas de asistencia jurídica y conservación del nexo familiar. Las representaciones consulares también podrían facilitar la obtención de los certificados domiciliarios. La Relatora Especial agradece al INPE su colaboración durante la visita que permitió la celebración de reuniones a puerta cerrada con grandes grupos de reclusos extranjeros.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

n/a

### **IV. Administration of justice and the rule of law**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 45 and 57):

45. The Special Rapporteur recommends that the law provide full recognition of the rights of health system users. The law should ensure that independent and accessible accountability mechanisms (courts, national ombuds or other) can consider complaints by health system users who allege that their human rights have been violated in care. The Special Rapporteur is concerned that a new draft law on patients' rights overemphasizes the individual responsibilities of health professionals without taking due account of institutional and structural factors that may contribute to causing harm to patients.

57. Any alleged victim of a violation of the right to health who has suffered harm should have access to effective judicial or other appropriate remedies at both national and international levels, as well as adequate reparation in suitable cases.

### **V. Fundamental freedoms**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 55, 71, 74 and 75):

55. Promoting health must involve effective community action in setting priorities, making decisions, and planning, implementing and evaluating strategies to achieve better health. All individuals and groups have the right to participate in decision-making processes that may affect their health or development. The Special Rapporteur recommends that the Government give urgent attention to fulfilling this right to participation at all stages of development or mining projects, including planning, development, implementation and monitoring.

71. The Special Rapporteur recommends that:

(a) Civil society, in particular people with mental disabilities, and their families, be involved at all stages in the development and implementation of mental health policy, legislation, programmes and strategies; [...]

74. He notes, however, the urgent need for the development of a comprehensive, intersectoral policy on sexual and reproductive health which focuses on the health needs of women, in particular those that are socially and economically marginalized. In particular, sexual and reproductive health-care laws, policies and programmes should be designed to reach women living in poverty, indigenous peoples and rural populations, with full respect for their human rights. Legislation to promote non-discriminatory access to sexual and reproductive health services should be developed, promoted and implemented. Civil society and women's groups should be involved in the development of policy, legislation, programmes and strategies in relation to sexual and reproductive health.

75. Similarly, the Special Rapporteur recommends that a comprehensive, intersectoral policy on sexual and reproductive health should be developed for - and with the participation of - adolescents. The policy should be grounded in international human rights law and should recognize, in particular, the right of adolescents to access information, education and user-friendly

sexual and reproductive health services, including on family planning and contraceptives, risks related to early pregnancy, and prevention of sexually transmitted infections such as HIV/AIDS. The right of adolescents to privacy, confidentiality and informed consent should be protected.

## **VI. Economic and social rights**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 28, 38, 71 and 72):

28. The Special Rapporteur's primary recommendation is that the Government, in cooperation with all stakeholders, formulate a comprehensive health policy and strategy, underpinned by the right to health, that is specifically designed to address inequity, inequality, discrimination and the situation of those living in poverty (in short, a "pro-poor equity-based health policy"). The recommendation anticipates both a health policy and strategy, i.e. not only identification of the goals, but also the measures by which the goals are to be reached.

38. The decrease in budgetary allocations to the health sector, in particular in light of Peru's continuing poor health indicators, is inconsistent with the State's international right to health obligations. The Special Rapporteur strongly recommends that this decline in expenditure be reversed and that greater financial resources allocated to the health sector, in line with the commitment made in the Acuerdo Nacional, as well as Peru's international human rights obligations, and that these resources be utilized on the basis of the pro-poor equity-based health policy signalled in the preceding paragraphs.

71. The Special Rapporteur recommends that:

(a) Civil society, in particular people with mental disabilities, and their families, be involved at all stages in the development and implementation of mental health policy, legislation, programmes and strategies;

(b) The Government take appropriate measures towards implementation of the new mental health policies of the Ministry of Health, including ensuring that adequate resources are made available;

(c) The Government take steps towards making appropriate mental health care - including care provided through general health services and in community settings, rehabilitation services, and support services for family members - available and accessible to people with mental disabilities and psychosocial problems throughout Peru, including in rural areas;

(d) Appropriate mental health services be made available to persons in detention;

(e) The human rights of persons with mental disabilities be fully respected within health-care services and facilities. Human rights training should be provided to all professionals who regularly interact with the mental health system. Independent monitoring and accountability mechanisms for mental health services, including accessible, transparent and effective complaints mechanisms for patients, must also be implemented. A review board should undertake regular inspections of mental health facilities, including patient interviews. Monitoring mechanisms should also include an independent, regular and systematic review of cases of involuntary admission and treatment, which should also be subject to strict procedural safeguards;

(f) Donors contribute funding and technical assistance for the implementation of the Comprehensive Plan for Reparations of the Truth and Reconciliation Commission, including in the area of mental health.

72. The Special Rapporteur ... is deeply concerned by the extremely high rates of maternal mortality, the second main cause of which is unsafe abortion. He stresses the importance of ensuring access - in particular for poor populations - to a wide range of sexual and reproductive health services, including family planning, pre- and post-natal care, emergency obstetric services



and access to information. In particular, women should have access to quality services for the management of complications, whether arising from pregnancy, childbirth or abortion. Punitive legal provisions against women who undergo abortions, as well as against the relevant service providers, should be removed.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 28, 76 and 81):

28. The Special Rapporteur's primary recommendation is that the Government, in cooperation with all stakeholders, formulate a comprehensive health policy and strategy, underpinned by the right to health, that is specifically designed to address inequity, inequality, discrimination and the situation of those living in poverty (in short, a "pro-poor equity-based health policy"). The recommendation anticipates both a health policy and strategy, i.e. not only identification of the goals, but also the measures by which the goals are to be reached.

76. [...] He stresses the importance of ensuring access - in particular for poor populations - to a wide range of sexual and reproductive health services, including family planning, pre- and post-natal care, emergency obstetric services and access to information. In particular, women should have access to quality services for the management of complications, whether arising from pregnancy, childbirth or abortion. Punitive legal provisions against women who undergo abortions, as well as against the relevant service providers, should be removed.

81. The Special Rapporteur endorses the recommendations of CERD (ibid., sect. D), and he also encourages the Government to implement recommendations bearing on the right to health adopted by the Permanent Forum on Indigenous Issues at its third session (see E/2004/43 - E/C.19/2003/23). The Special Rapporteur urges the Government and other actors to make every effort to ensure that:

- Research is carried out into the economic, cultural, political and linguistic obstacles to the enjoyment of the right to health faced by indigenous peoples and ethnic groups in Peru. This research should involve the active participation of representatives, including women, from Peru's indigenous and ethnic minority communities, and should serve as the basis for developing policies and programmes to address these obstacles;
- Whenever possible, all health data are disaggregated by ethnicity and socio-economic status;
- All health policies, programmes and projects specifically take into account the needs, cultures and traditions of, as well as discrimination affecting, different ethnic groups, and indigenous women;
- All affected ethnic groups participate actively and in an informed manner whenever health policies, programmes and projects are formulated and implemented;
- All health professionals are provided with training to ensure that they are aware of, and sensitive to, issues of ethnicity, culture and gender;
- So far as possible, the health facilities, programmes and projects that are in – or serve - a community are available in the mother tongue of most people in that community;
- Central and regional government, teaching institutions, health professional associations and others actively devise and implement strategies that encourage individuals from all ethnic groups to become health professionals. These strategies should include measures to increase the

ethnic diversity of the student body attending existing training programmes. However, in addition, new training courses should be devised for - and by - indigenous and other non-dominant ethnic groups. These courses should include training in the medical traditions and practices of the groups concerned. In this way, these courses will serve several extremely important purposes. Not least, they will help to preserve the invaluable and increasingly threatened traditional knowledge of indigenous peoples.

## **IX. The right to development and international cooperation**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.3, paras. 10, 39, 49-51, 60, 78 and 83):

10. The Special Rapporteur understands that the Government has begun to prepare a national human rights plan of action, as anticipated by the Vienna Declaration and Programme of Action in 1993. The preparation of the plan of action - and, in due course, the implementation of the plan itself - must be provided with adequate financial support. In this regard, the Special Rapporteur recommends that the Government approach the OHCHR Technical Cooperation Programme for assistance, not only in relation to the preparation of the plan, but also its implementation.

39. Some of the obstacles to the enjoyment of the right to health in Peru derive from structural obstacles at the international level, including the heavy burden of debt repayments, which absorb about 24 per cent of the national budget. In these circumstances, the Special Rapporteur recommends that a significant proportion of Peru's debt, whether bilateral or multilateral, be cancelled on the understanding that the released funds will be reallocated for the implementation of the pro-poor equity-based health policy signalled above.

49. The Special Rapporteur stresses the human rights responsibility of countries to make use of the safeguards available under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Doha Declaration on the TRIPS Agreement and Public Health - such as compulsory licences - to protect public health and promote access to medicines. He recalls that TRIPS and the Doha Declaration allow countries to protect public health. Thus, the conclusion of bilateral trade agreements must not result in a restriction on Peru's ability to use the public health safeguards enshrined in TRIPS and the Doha Declaration (see E/CN.4/2004/49/Add.1).

50. The Special Rapporteur urges Peru to take its human rights obligations into account when negotiating bilateral trade agreements. He suggests that before any trade agreement is finalized assessments identify the likely impact of the agreement on the enjoyment of the right to health, including access to essential medicines and health care, especially of those living in poverty. All stages of the negotiations must be open, transparent and subject to public scrutiny.

51. In accordance with its human rights responsibility of international cooperation, the United States should not apply pressure on Peru to enter into commitments that either are inconsistent with Peru's constitutional and international human rights obligations, or by their nature are "WTO-plus".

60. Concerning water and sanitation, the Special Rapporteur reiterates and endorses the relevant recommendations of the Special Rapporteur on the right to adequate housing (E/CN.4/2004/48/Add.1, paras. 23-25). He also urges regional, national and international institutions to ensure that technical and financial resources are made available to support the plan to bring sanitation and safe water to Belen, and all comparable communities.

78. The donor community provides important funding for sexual and reproductive health care in Peru. The Special Rapporteur urges those countries providing assistance to adopt a rights-based approach to their policies and programmes.

83. [...] (c) Whenever appropriate, the offices of the United Nations and the Organization of American States, including PAHO/WHO, should be called upon to give technical assistance in relation to health and human rights legislation, policies and programmes.

Special Rapporteur on the human rights of migrants (E/CN.4/2005/85/Add.4, para. to 82)

82. La Relatora Especial insta al Gobierno a solicitar a las Naciones Unidas apoyo en el marco de "Acción 2" para el fortalecimiento de su sistema nacional de promoción y protección de los derechos humanos de los migrantes potenciales y los extranjeros presentes en el Perú.

**X. Comments from the Government**<sup>35</sup>

n/a

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<sup>35</sup> As published as official documents of the CHR.

## ROMANIA

### Introduction

During the period under review, the following special procedures visited the country:

- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (please refer to document E/CN.4/2005/51/Add.4);
- The Special Rapporteur on the sale of children, child prostitution and child pornography (please refer to document E/CN.4/2005/78/Add.2).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.4, paras. 12, 18, 25, 27, 29, 54 and 68):

12. [...] The Special Rapporteur notes that Romania's third and fourth periodic reports to the Committee [on Economic, Social and Cultural Rights], which were due on 30 June 1994 and 30 June 1999 respectively, have not yet been submitted. He encourages the Government to submit its reports to the Committee as soon as possible.

18. [...] Thus, the Special Rapporteur recommends that human rights training, including on the right to health, be provided for all public officials with responsibilities bearing upon the human rights of individuals and communities. The Special Rapporteur also recommends greater inter-departmental cooperation in relation to health policy. The Government should establish mechanisms in Government that ensure that Romania's binding right to health obligations are taken into account across all relevant policy-making processes.

25. [...] Rigorous efforts should be made to ensure that health information and education reach every sector of the population in Romania. Posters, leaflets, radio campaigns, street-theatre - whatever works to get life-saving information to men, women and children - should be used. For example, creative education, training and media programmes should be explicitly designed to change attitudes that foster discrimination against people living with HIV/AIDS or persons with mental disabilities. This is crucial to raising awareness and understanding among individuals and communities that discrimination against these and other individuals and groups is unacceptable and a violation of human rights. Increased efforts also must be made to ensure that people know that domestic violence is a breach of criminal law. Innovative ways must be devised to ensure that individuals and communities have information regarding the benefits available under the health insurance system, the availability of contraceptive and other reproductive health services, including cervical cancer screening, and so on. The Special Rapporteur was frequently advised that Romania does not yet enjoy a well-established participatory culture in which individuals enquire about what they are entitled to receive by way of health services. In these circumstances, the Government has a heavy responsibility to take the initiative and actively encourage greater participation and enhance public information and education in relation to health.

27. However, the Special Rapporteur strongly recommends that the Government significantly strengthen national accountability mechanisms in relation to the right to health. The Government should begin by reviewing the existing accountability devices that bear upon the right to health and then consider all options for strengthening accountability. One option is to keep the existing institutions, with the same mandates and powers, but to provide them with more resources. A second option is to keep the existing institutions, but to widen mandates and powers, as well as

providing more resources. A third option is to establish a new human rights institution, specifically charged with promoting and protecting the right to health, and empowered to conduct public inquiries and to receive complaints. This third option could be pursued either by a new institution that focuses only on the right to health, for example a Health Ombudsman or, preferably, by a national human rights institution with a wide mandate and powers in conformity with the Paris Principles. After consultations, the Government should decide how best to proceed. However, the Special Rapporteur has no doubt that some measures are necessary to enhance accountability in relation to the right to health because the current arrangements, including the courts and professional associations, are not providing adequate accountability in relation to patients' concerns, as well as the right to health generally. On the issue of mental health, see paragraphs 59 to 68 below.

29. [...] The Special Rapporteur recommends that medical schools integrate human rights training for health professionals into their curricula. All health professionals should receive regular education and training on the human rights of patients, including their rights to health and non-discrimination; the health-related human rights of vulnerable groups, such as women, children and people with disabilities; and their own human rights relating to their professional practice. In addition, the Special Rapporteur urges the Government to enhance the terms and conditions of all health professionals, including providing adequate incentives to encourage health professionals to work in rural or other underserved areas.

54. [...] The Special Rapporteur urges the development of pre-service and in-service training on patient rights for health-care workers, recognizing that patient contact with the health-care system also represents an opportunity for patient education and development of health literacy that is part of the realization of the right to health.

68. In view of the reported widespread problems, the Special Rapporteur strongly recommends that an independent mental health commissioner be established and appointed as a matter of urgent priority. The commissioner should be mandated to receive information from users of mental health-care services, their families, and civil society organizations. He or she should be mandated to investigate allegations of human rights violations, including, if necessary, travel at short notice to mental health-care facilities, and to have full access to these facilities, including the opportunity to hold private meetings with patients, staff and others. The commissioner should provide independent advice to the Ministry of Health, hospital directors and others, thereby helping them to respect the right to health and other human rights of all those for whom they are responsible. The commissioner should report to Parliament. Because of the clear urgent need for a mechanism of this sort, the Special Rapporteur recommends that it does not wait for the review of right to health accountability mechanisms recommended in section III C.

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.2, paras. 105, 106 and 113)

105. On the legislation the Special Rapporteur recommends:

- a) to decriminalise prostitution;
- b) to amend the 2002 Emergency Ordinance No. 112 to protect the victims of trafficking from being prosecuted for illegal border crossing;
- c) to continue with the adoption of bilateral agreements on anti-trafficking measures with destination countries.

106. To facilitate the enforcement of the law, the Special Rapporteur recommends:

- a) to train the police on how to deal with victims of trafficking, domestic violence and sexual abuse;
- b) to implement a system of protection of witnesses in cases of trafficking. Witnesses must be given not only protection but also incentives to testify. Dissuasive factors, such as the cost of transportation to be covered by witnesses at present, should be removed or by-passed with appropriate incentives;
- c) to draw lessons from the pilot experience of the court of minors in Iasi in setting up the new system on juvenile justice.

113. The collaboration between the State and civil society needs improvement. New mechanisms should be developed to enhance collaboration with NGOs and the business sector. The State should outsource to NGOs those services that would be delivered more efficiently by more flexible organizations as NGOs vis-à-vis the public administration. The Special Rapporteur invites NGOs not to limit their activities to the delivery of social services but to be more vocal in their advocacy role.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.4, para. 53):

53. [...] The Special Rapporteur urges the implementation of policies that explicitly address gender inequalities, stigma and discrimination; provide comprehensive sexual and reproductive health information, education and services to young people; and ensure access to voluntary testing, counselling and treatment for sexually transmitted infections, including HIV/AIDS. He further urges that legislation, regulations and other measures to eliminate all forms of discrimination against people living with HIV/AIDS and members of vulnerable groups be implemented.

## **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78/Add.2, paras. 107 to 111)

107. Migration often opens opportunities for people and cannot be stopped. However, migration also involves a significant number of people, including children, moving in precarious conditions with lack of information and means to face difficult and dangerous situations. These are the people to target with adequate prevention programmes not to stop their will to migrate but to better equip them to go through the migration process in a positive way.

108. Policies and programmes to fight trafficking and child sexual exploitation must address the root causes of the phenomenon to be effective. Social exclusion and discrimination are major root causes. In order to address these large, overarching and ultimately rather vague concepts, the Special Rapporteur suggests targeting groups affected in different ways and to different extents by social exclusion, discrimination and stigmatisation. In a non-exhaustive list they are: street children, Roma children, victims of sexual abuse and domestic violence, children in institutions or who recently left institutions, children with dysfunctional and poor families with a low level of education. A combination of targeted measures, such as street programmes for street children and adolescents in prostitution, and structural changes, such as the reform of the school, should be sought. In particular, the development of programmes to address child prostitution is urgent. It is

like running a race: social programmes have to run fast enough to offer alternatives to children before pimps reach them first.

109. On the anti-trafficking programmes, the Special Rapporteur recommends:

- a) to undertake a comprehensive evaluation process of rehabilitation programmes to establish performance indicators and refine methodologies;
- b) to envisage initiatives to exchange experiences in this area, identify lessons learned and promote cross-fertilisation of good practices at the national and regional levels.

110. On residential institutions, while acknowledging the remarkable progress made, the Special Rapporteur recalls not to forget children who are still in institutions and find themselves in vulnerable and disadvantaged situations. He recommends:

- a) to continue the process of transformation of old-type institutions by establishing targets for the next years;
- b) to establish a mechanism to allocate automatically a budget for foster families in all cases they are needed to take care of children between 0 and 3, who, by law, should not stay in institutions. Reintegration with the biological family should be the first priority and should be sought even before the foster family option;
- c) to intensify programmes aimed at improving the quality of care in institutions and encourage voluntary work in this area;
- d) to create the career and profession of specialised educator to work in institutions.

111. The Special Rapporteur suggests using the findings of the study on the causes of abandonment to design policies to prevent child abandonment.

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.4, paras. 36, 37 and 84):

36. [...] The Special Rapporteur urges the Government to take vigorous action in the health sector to root out corruption by ensuring implementation of its anti-corruption policies and laws. Transparent accounting and rigorous and independent monitoring of the national and regional budgets, as well as the budgets of all health institutions, must be ensured. Given the impact of illicit payments on accessing health care, the Government must ensure that health system users are: not expected to make illicit payments; receive information about their right to health care on the basis of equality and non-discrimination; and have access to independent, accessible and effective complaints mechanisms. The Government must ensure that the Act on the Prevention, Detection and Prosecution of Corruption Offences and other criminal law protections against corruption are applied in practice to the health sector, and that corruption offences are prosecuted.

37. The Special Rapporteur recommends that the Ombudsman launches an investigation into corruption in the health service and its impact on the enjoyment of the right to health.

84. Particular attention must be given to ensuring accountability and access to remedies in relation to abuses of the right to health, or abuses of other human rights in health-care settings. Some progress has been made in this respect in recent years through the adoption of new legislation in fields including patients' rights, corruption and mental health. The Special Rapporteur recommends that the Government take measures to enhance awareness among Romania's population of these legislative frameworks and their right to health, and ensure institutional arrangements and remedies are available to those who have suffered right to health violations.

Special Rapporteur on the sale of children, child prostitution and child pornography  
(E/CN.4/2005/78/Add.2, para. 112)

112. The Special Rapporteur encourages the Government to address firmly the problem of corruption. Public institutions must be defended as they represent the backbone of democracy. At the same time, institutions must be clean to function properly.

**V. Fundamental freedoms**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.4, paras. 21, 41 and 85):

21. The Special Rapporteur urges the Government to extend its efforts to engage communities more actively in planning, monitoring, assessment, management and execution of health programmes and services. In particular, he stresses the importance of ensuring the participation of marginalized and other groups such as women, children, the elderly, and people with mental disabilities.

41. [...] The Government is urged to increase its collaboration with civil society groups to develop reproductive health programmes and to raise awareness at community level of the rights to sexual and reproductive health.

85. Participation of the population in health decision-making is a central element of the right to health. Increased opportunities should be provided to the population to engage in the development, implementation and monitoring of policies, programmes and legislation related to the right to health.

**VI. Economic and social rights**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.4, paras. 32, 41, 58, 67, 83 and 84):

32. Expenditure on health care should be increased so that, as a minimum, it is in line with the East European average. The health insurance fund must be used only for its proper purposes. Given their crucial importance in accessing health services, the Government should make further efforts to ensure all individuals obtain identity documents. Finally, the Government must, in practice, ensure the equitable distribution of health-care services throughout the State, and ensure that essential medicines are within the financial means of all population groups.

41. [...] The Government is urged to increase its collaboration with civil society groups to develop reproductive health programmes and to raise awareness at community level of the rights to sexual and reproductive health.

58. The Special Rapporteur commends the development of programmes to address tuberculosis, especially for vulnerable and marginal populations, and urges that barriers to access be addressed in their implementation. Prevention, treatment and care should be available and accessible to all, well-publicized and evaluated on the basis of accessibility and treatment outcomes.

67. The Special Rapporteur recommends that the Government of Romania take further steps towards ensuring the human right to mental health care for persons with mental disabilities,



including: (a) improving and extending community-based mental health care and other community-based services to support persons with mental disabilities; (b) fully implementing the mental health law, the National Strategy and the Memorandum; (c) taking measures to ensure the protection of human rights of persons with mental disabilities within mental health-care services and facilities. Human rights training should be provided to all professionals that regularly interact with the mental health system. Patients should be provided with accessible, transparent and effective complaints mechanisms.

83. In recent years, the Government of Romania has adopted an impressive array of policies, programmes and legislation concerning the right to health. The Special Rapporteur welcomes this commitment, and urges the Government to take all necessary measures, including administrative and budgetary measures, to ensure implementation. Particular attention must be given to ensuring operationalization of the right to health of marginalized groups, such as rural populations and Roma.

84. Particular attention must be given to ensuring accountability and access to remedies in relation to abuses of the right to health, or abuses of other human rights in health-care settings. Some progress has been made in this respect in recent years through the adoption of new legislation in fields including patients' rights, corruption and mental health. The Special Rapporteur recommends that the Government take measures to enhance awareness among Romania's population of these legislative frameworks and their right to health, and ensure institutional arrangements and remedies are available to those who have suffered right to health violations.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on the right to health (E/CN.4/2005/51/Add.4, paras. 78-81, and 83):

78. [...] The Special Rapporteur recommends that the right to health of Roma, including Roma women, as well as their right to non-discrimination and equality, are given the most careful attention in all health legislation, policies and programmes, and that the Government take special measures to remove obstacles to, and promote, their right to health. He recommends that all efforts be made to implement the goals and targets of the Romania Country-level Action Plan in the Decade of Roma Inclusion 2005-2015.

79. The Special Rapporteur endorses: (a) the recommendation made by the Committee on the Rights of the Child to the Government that it initiate campaigns among health professionals aimed at redressing negative attitudes towards Roma (CRC/C/15/Add.199, para. 65 (a)); (b) the recommendation made by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination to the Government that it should make additional efforts to facilitate Roma obtaining proper identity documents. This might include assurances, backed up by references to relevant legislation and good practices, that no disadvantage shall arise on the grounds of ethnicity (E/CN.4/2003/5/Add.2, para. 43).

80. The Special Rapporteur recommends that the Government extend the participation of Roma, including Roma women and children, in the development, implementation and monitoring of health policies and programmes affecting them. He encourages the Government to extend the

Roma community health mediator scheme, and to develop schemes to encourage Roma to train and qualify as health professionals.

81. The Special Rapporteur urges the Government to ensure that Roma, including Roma women and children, benefit from access to culturally sensitive health information and education, including on sexual and reproductive health, and to involve Roma in developing and distributing this information.

83. In recent years, the Government of Romania has adopted an impressive array of policies, programmes and legislation concerning the right to health. The Special Rapporteur welcomes this commitment, and urges the Government to take all necessary measures, including administrative and budgetary measures, to ensure implementation. Particular attention must be given to ensuring operationalization of the right to health of marginalized groups, such as rural populations and Roma.

## **IX. The right to development and international cooperation**

### Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78/Add.2, paras. 114 to 116)

114. The Government is encouraged to seek the assistance of the UN country team in implementing the recommendations of this report. In particular, the UN country team can provide assistance in the design of policies to address the causes of child abandonment; in carrying out evaluations of rehabilitation programmes for victims of trafficking; in facilitating the exchange of lessons learned and good practices on anti-trafficking programmes; in the design and implementation of programmes to address child prostitution drawing on the experience of the on going project on HIV/AIDS prevention in Bucharest; in providing capacity building to strengthen the advocacy role of NGOs and trade unions in the promotion of children's rights; in the design of a desirable reform of the education system. The education reform should ensure a rights-based approach to education, which encompasses not only the integration of human rights into the curriculum, but also in the educational process and teaching methods and in the overall environment in which education takes place. The Plan of Action for the first phase (2005-2007) of the World Programme for Human Rights Education considered by the General Assembly in December 2004 can be a reference document in this exercise. (A/59/525).

115. The Special Rapporteur takes up the suggestion of the Resident Coordinator and wishes that the follow up of visits of Special Rapporteurs in Romania becomes an activity of the work plan of the UN country team.

116. The Special Rapporteur recommends to donors to invest in the promotion of children's rights, particularly in the areas indicated in the above recommendations. The rehabilitation and reintegration of victims of trafficking and sexual exploitation is a long term process. It is therefore important to ensure some continuity in funding programmes in this area. The Special Rapporteur is aware that donors tend to prefer to invest in projects where results can be measured possibly quickly and easily. Nevertheless, he recalls that policies and programmes cannot be effective if they do not address the root causes of problems. This means a strong investment in prevention programmes. The evaluation of rehabilitation programmes of victims of trafficking is another area that should be considered, being aware that 100% of success in interventions is an unrealistic goal in such a difficult domain.

**X. Comments from the Government** <sup>36</sup>

n/a

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<sup>36</sup> As published as official documents of the CHR.

## **SERBIA AND MONTENEGRO**

### **Introduction**

During the period under review, the Special Rapporteur on the right to freedom of opinion and expression (please refer to document E/CN.4/2005/64/Add.4).

### **I. Institutional and legal framework for the promotion and protection of human rights**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4(2005/64/Add.4, paras. 74 to 76 and 79)

74. The Special Rapporteur invites the Government of the Republic of Serbia to consider appropriate legislation for the establishment of an independent national human rights commission and of an Ombudsperson Office.

75. The Special Rapporteur urges the Governments and Parliaments of the Republic of Serbia and of Montenegro to conclude their work on a comprehensive body of legislation, which would also include law on the right to access to information.

76. The Special Rapporteur calls on UNMIK, OSCE and KFOR to ensure that their activities comply with human rights and humanitarian standards, especially with regard to freedom of opinion and expression. The mandate of the Kosovo Ombudsperson's Office should be extended in order to cover KFOR activities.

79. National, provincial and international organizations should work together in order to build up a consistent strategy against the dissemination of hatred and hate speech. Mere legislative actions may be not sufficient to thwart a phenomenon that it is deeply ensconced in the society. Measures against these scourges should not entail a reduction of the right to freedom of expression, but should promote a new vision in communication based on human rights principles.

### **II. Non-discrimination and equality before the law**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4(2005/64/Add.4, para. 77)

77. The Special Rapporteur recommends to national institutions and international agencies to establish a mechanism that would monitor, on a regular basis, the status of freedom of opinion and expression of minorities in Vojvodina.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4(2005/64/Add.4, paras. 72 and 73)

72. The Special Rapporteur urges the Federal Government of Serbia and Montenegro, the Kosovo Provisional Institution of Self-Government and UNMIK to consider action against impunity as one of the main priorities ahead and to do their utmost to ensure impartial and comprehensive investigations of ethnically motivated crimes, including disappearances and abductions.

73. The Special Rapporteur urges the Government of Serbia and Montenegro and international organizations to strengthen their action against organized crime, corruption and impunity. The perpetrators of human rights violations and crimes should be brought to justice regardless of their political affiliation. Law enforcement agencies and judicial authorities should speedily conclude investigations on the assassination of media professionals and workers union leaders.

### **IV. Administration of justice and the rule of law**

n/a

### **V. Fundamental freedoms**

Special Rapporteur on the right to freedom of opinion and expression (E/CN.4(2005/64/Add.4, paras. 78, 80 and 81)

78. The Special Rapporteur encourages Governments and other relevant authorities to consider the opportunity of reducing drastically the amount of fines to be paid in relation to defamation cases. Moreover, legislators should take the necessary action to modify the present legislation on defamation, include it in civil law and make sure that fines do not suffocate media activity. Defamation law should include the principle that public personalities should tolerate a greater degree of criticism than ordinary citizens.

80. International organizations and institutions should promote the establishment of national inter-ethnic professional media associations, which could provide a forum for dialogue. These associations should also be the principal promoters of a Press code, which would include basic human rights principles, and would develop an ethical approach to the profession. An independent, inter-ethnic authority, composed of jurists, media professionals and other intellectual categories, could help solving the most controversial cases regarding the violation of professional ethics.

81. The Special Rapporteur encourages all international organizations on the ground to find fresh impetus in their work. Programmes on peaceful coexistence, tolerance, reconciliation should be strengthened and freedom of opinion and expression considered as one of major channels for constructive dialogue. International and regional organizations may think about the

establishment of a journalism school. Professional training and financial investments, especially an increase in the salaries, may upgrade the moral stance of the press and the media industry.

#### **VI. Economic and social rights**

n/a

#### **VII. Cultural rights**

n/a

#### **VIII. Situation of specific groups**

n/a

#### **IX. The right to development and international cooperation**

n/a

#### **X. Comments by the Government** <sup>37</sup>

n/a

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<sup>37</sup> As published as official documents of the CHR.

## SOMALIA

### Introduction

During the period under review, the Independent Expert on the situation of human rights in Somalia visited the country (please refer to document E/CN.4/2005/117).

### I. Institutional and legal framework for the promotion and protection of human rights

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (a) (b) (f) (g) (i) and (k) to (m))

118. The expert makes the following recommendations. The expert:

(a) Calls on the Transitional Federal Parliament and Transitional Federal Government to ensure that human rights safeguards and principles are included in all their deliberations, documentation, institutions and actions;

(b) Calls upon the Transitional Federal Parliament to undertake discussions to work towards signing and ratifying the core international human rights treaties, in particular, the Convention on the Rights of the Child;

(f) Requests the responsible United Nations bodies urgently to study the possibility of establishing an independent organization for the protection of the endangered Somali coastline;

(g) Recommends the establishment of a “Truth and Reconciliation Commission” model to consider past injustices and human rights violations which occurred during Somalia’s fourteen-year civil conflict.

(i) On a similar note, recommends that the donor community and international community give greater consideration to funding human rights-based police training and effective military demobilization which will be critical to the stabilization of Somalia;

(k) Calls on the Secretary-General and the Security Council to establish a committee of independent experts to examine allegations of past massive human rights violations and crimes against humanity committed in Somalia, and to report on options for how these might be addressed;

(l) Urges the international community to reinforce their financial support and technical assistance to the Transitional Federal Parliament and Transitional Federal Government, with a view to ensuring that human rights are thoroughly integrated in the institutions, frameworks and laws which are being forged;

(m) Calls upon Somali authorities to establish independent human rights institutions for the protection and promotion of human rights and encourages technical assistance and financial support from the United Nations agencies as well as donor countries.

### II. Non-discrimination and equality before the law

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (d))

118. The expert makes the following recommendations. The expert:

(d) Calls upon the Transitional Federal Government to increase its support for the Ministry of Gender and Family Affairs and to keep the human rights of women on the top of their agenda. The expert also urges the international community and the UNCT to support small projects and programmes in support of their fundamental work on behalf of Somalia’s women.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (c) (d) and (e))

118. The expert makes the following recommendations. The expert:

(c) Calls upon all Somali authorities to pay serious attention to the protection of children and to coordinate with UNICEF and all other international NGOs to achieve the goal of a better life for the children of Somalia;

(d) Calls upon the Transitional Federal Government to increase its support for the Ministry of Gender and Family Affairs and to keep the human rights of women on the top of their agenda. The expert also urges the international community and the UNCT to support small projects and programmes in support of their fundamental work on behalf of Somalia's women.

(e) Calls upon all Somali local authorities to provide full protection and support for international humanitarian aid personnel operating in Somalia;

### **IV. Administration of justice and the rule of law**

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (f) (g) and (k))

118. The expert makes the following recommendations. The expert:

(f) Requests the responsible United Nations bodies urgently to study the possibility of establishing an independent organization for the protection of the endangered Somali coastline;

(g) Recommends the establishment of a "Truth and Reconciliation Commission" model to consider past injustices and human rights violations which occurred during Somalia's fourteen-year civil conflict.

(k) Calls on the Secretary-General and the Security Council to establish a committee of independent experts to examine allegations of past massive human rights violations and crimes against humanity committed in Somalia, and to report on options for how these might be addressed;

### **V. Fundamental freedoms**

n/a

### **VI. Economic and social rights**

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (f))

118. The expert makes the following recommendations. The expert:

(f) Requests the responsible United Nations bodies urgently to study the possibility of establishing an independent organization for the protection of the endangered Somali coastline;

### **VII. Cultural rights:**

n/a



### **VIII. Situation of specific groups**

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (c) (d) (j) and (n))

118. The expert makes the following recommendations. The expert:

(c) Calls upon all Somali authorities to pay serious attention to the protection of children and to coordinate with UNICEF and all other international NGOs to achieve the goal of a better life for the children of Somalia;

(d) Calls upon the Transitional Federal Government to increase its support for the Ministry of Gender and Family Affairs and to keep the human rights of women on the top of their agenda. The expert also urges the international community and the UNCT to support small projects and programmes in support of their fundamental work on behalf of Somalia's women.

(j) Encourages continued comprehensive multi-agency efforts to cater for both the short-term needs of IDPs as well as longer-term solutions to the problem of integration, including the provision of social services to cater for their humane absorption into society;

(n) Recommends that the international community and local authorities render every assistance to civil society in fulfilling its role with respect to the protection and promotion of human rights in Somalia;

### **IX. The right to development and international cooperation**

Independent Expert on the situation of human rights in Somalia (E/CN.4/2005/117, para. 118 (f) (i) (l) and (n))

118. The expert makes the following recommendations. The expert:

(f) Requests the responsible United Nations bodies urgently to study the possibility of establishing an independent organization for the protection of the endangered Somali coastline;

(i) On a similar note, recommends that the donor community and international community give greater consideration to funding human rights-based police training and effective military demobilisation which will be critical to the stabilization of Somalia;

(l) Urges the international community to reinforce their financial support and technical assistance to the Transitional Federal Parliament and Transitional Federal Government, with a view to ensuring that human rights are thoroughly integrated in the institutions, frameworks and laws which are being forged;

(n) Recommends that the international community and local authorities render every assistance to civil society in fulfilling its role with respect to the protection and promotion of human rights in Somalia;

### **X. Comments from the Government**<sup>38</sup>

n/a

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<sup>38</sup> As published as official documents of the CHR.

## SUDAN

### Introduction

During the period under review, the following special procedures visited the Sudan:

- The Independent Expert on the situation of human rights in the Sudan (E/CN.4/2005/11).
- The Representative of the Secretary-General on internally displaced persons (please refer to document E/CN.4/2005/8).
- The Special Rapporteur on extrajudicial, summary or arbitrary executions (please refer to document E/CN.4/2005/7/Add.2).
- The Special Rapporteur on violence against women, its causes and consequences (please refer to document E/CN.4/2005/72/Add.5).

### I. Institutional and legal framework for the promotion and protection of human rights

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2005/11, paras 71 and 72)

71. Grievances emanating from other regions should be accepted and addressed. The peace process is now over, a comprehensive agreement having been signed. The conflict in Darfur and others that are likely to emerge must be adequately addressed. Article 21, paragraph 3, of the Universal Declaration of Human Rights says: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” There must be respect for the rule of law and lifting of the restrictions imposed on political parties. The guns must be taken out of the hands of the militias. The most important thing is the disarmament of people who are not part of the military.

72. The Government of National Unity under the Comprehensive Peace Agreement should demonstrate its commitment to human rights by ratifying: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without reservations; the Rome Statute of the International Criminal Court and the Agreement on Privileges and Immunities of the International Criminal Court; the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights; and the African Charter on the Rights and Welfare of the Child.

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.5, para. 9):

9. (...) the situation in Darfur is a grave human crisis exacerbated by insecurity; mutual mistrust between the people and the Government; and lack of effective follow-up regarding allegations of human rights violations, including rape of women and girls. (...)

The Government must:

- Facilitate the full involvement of women and women’s groups in the peace process in accordance with Security Council resolution 1325 (2000) and ensure that women’s needs and interests are included in all negotiations. (...)

- Ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples Rights on the rights of women in Africa.
- Request technical cooperation from OHCHR, DAW, DESA in regards to the implications of ratification of these instruments.
- Commence a dialogue for the improvement of the legal protection of women's rights in Sudan, and effectively implement current obligations under international law.

While the establishment of the National Commission for the investigation of rape is a positive initiative, it is necessary that the Commission:

- diversify its composition to include social workers, and medical staff;
- Improve its data collection methods and collaborate with the United Nations and non-governmental organizations (NGOs) in this regard.

Representative of the Secretary-General on internally displaced persons (E/CN.4/2005/8, paras. 42 to 46 and 48):

42. Cooperation on security and protection would create the necessary environment for humanitarian activities, allow for access by the United Nations and other humanitarian workers, including national and international NGOs, and encourage the donor community to make up the shortfall and provide the needed support. The Government of the Sudan needs to intensify its cooperation with the international humanitarian community in a transparent and open manner in order to ensure swift, effective and sustained assistance and protection for the displaced. (...) The issue of voluntary return has to be addressed jointly and constructively by the international community and the national authorities. The right to return voluntarily in safety and dignity must be respected at all times. This will also contribute to the sustainability of return.

43. The first political issue is dealing with the threat of the Janjaweed. (...) a cooperative arrangement with the international community could check the armed activities of the Janjaweed. Given the fear of the Government about an imbalance in favour of the rebels, the security measures against the Janjaweed and other armed groups should go hand in hand with ensuring strict adherence to the ceasefire agreement between the parties to the conflict.

44. Next, linkage with the war in the South. As what is happening in Darfur is not dissimilar to what has been happening in the South for decades, including the use of tribal militias and atrocities against civilians, lessons from that experience could be used to identify negative practices to be avoided and positive developments. A meeting involving experienced Southerners with Darfurians and government representatives in the context of a workshop or a symposium would facilitate this purpose.

45. The second political issue is the adaptation of elements of the peace agreement with the SPLM/A, especially those relating to the Nuba Mountains and Southern Blue Nile, to the situation in Darfur. This should be possible as the grievances of Darfur are recognized as being similar to those that have been addressed in the ongoing peace process between the Government and the SPLM/A. It could be done with the help of some of the individuals who have been involved in that peace process. Their experience could be a vital resource in the negotiations. Conversely, failure to manage the Darfur crisis constructively could eventually jeopardize the peace achievement in the South, thereby undermining international efforts in resolving the conflict and plunging the country into yet another catastrophe.

46. The positive role played by the AU Cease Fire Commission should be developed, enhanced and supported with equipment, logistics and funding, as it appears to be more acceptable to the Government than international intervention. The AU has already shown itself to have the potential to maintain peace and build confidence between the parties and, as already noted, provides a cover for the Government to rein in the Janjaweed and other armed groups. (...)

48. With the people of the South, the Nuba Mountains, the Southern Blue Nile, the Beja, and now the predominantly non-Arab groups in Darfur challenging the one-sided Arab orientation of the national identity framework, the country is called upon to transform itself and start a new common and inclusive framework of national identity in which all Sudanese would find a sense of belonging as citizens with the equality and dignity of citizenship. To resist this unfolding identity reconfiguration and demand for equality would be imprudent, unsustainable and self-defeating. It is time for a genuine national dialogue towards a comprehensive peace, security and stability in the country.

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7/Add.2, paras. 58 to 60):

58. (...) The impact of international support is evidenced by the positive developments in the peace process in the South. A similar effort should be made in Darfur. The Sudanese people expect the international community to act as a guarantor and to move this process.

59. (...) The Government should also ensure, with international assistance if available, that appropriate training is given to the armed forces so that they act in accordance with international human rights law and international humanitarian law. The Government must ensure that immediate and complete access is provided to humanitarian actors as well as international human rights monitors, so that the international community has every opportunity, in cooperation with the Government, to protect the lives of vulnerable persons in Darfur. The two rebel movements in Darfur should also guarantee safe humanitarian access. The international community should continuously be urged to provide generous humanitarian assistance to the affected people of the Sudan. The United Nations must continue to emphasize the need to protect the human rights of civilians. An international presence is of the utmost importance to guarantee consistency, impartiality and neutrality. At the same time, I must stress the importance of addressing the political and economic grievances of the people of Darfur. A comprehensive, just and transparent peace process that takes these grievances into account is therefore needed.

## **II. Non-discrimination and equality before the law**

Representative of the Secretary-General on internally displaced persons (E/CN.4/2005/8, para. 47):

47. The tragedy the Sudan has been going through for decades in the southern part of the country, since the 1980s extended into the Nuba Mountains and Southern Blue Nile and now dramatized by the unfolding crisis in Darfur, signifies a nation in painful search of itself. The Sudan used to be viewed in terms of a simplistic dichotomy between an Arab Muslim North and an African Christian and animist South. For Southerners, all Northerners were Arabs and Muslims. The first war in the South, 1955-1972, was fought mostly by soldiers from the Nuba Mountains and Darfur. With the resumption of the war in 1983, the SPLM/A reversed the separatist agenda of the South and called for a New United Sudan, free from any discrimination on the grounds of race, ethnicity, religion, culture or gender. The Nuba and the Ingassana or Funj of the Southern Blue Nile began to disavow Arab identity and joined the South in the struggle for

equality. The Beja in eastern Sudan, though not part of the SPLM/A, are also asserting their non-Arab identity and demanding equal rights as citizens. The non-Arabs of Darfur, though belated in the assertion of their non-Arab identity, appear now to be undergoing a similar transformation. The identification of the conflicting parties as Arabs or Africans, or Blacks, is certainly new to Darfur.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2005/11, paras 61 to 70)

61. The Government of the Sudan should repeal article 31 of the National Security Forces Act which allows up to nine months' detention outside the control of the judiciary.

62. The Government of the Sudan should ensure that all reports of detainees being held incommunicado are fully and independently investigated and that those suspected to be responsible for these acts are held accountable.

63. All security forces, including members of the National Security Agency, should inform detainees immediately of the reasons for their arrest and promptly inform them of any charges against them.

64. The relevant authorities should ensure that the detainees' families are promptly notified of their arrest and place of detention.

65. Security forces should allow every detainee prompt, regular and confidential access to family and lawyers.

66. All detainees should be brought promptly before a judge. The Government of the Sudan should end incommunicado detention.

67. The immunity from prosecution of the national security forces contained in article 33 of the National Security Forces Act should be repealed.

68. There should be an immediate investigation of any complaint of ill-treatment against any member of the security forces.

69. The relevant authorities should provide compensation for victims of torture as well as medical treatment and rehabilitation.

70. The Government of the Sudan should ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations.

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.5, para. 9):

9. The Government must:

- Ensure the security of civilians and introduce protection measures to reduce the ongoing risk of rape, beatings and abductions for women and girls when they move outside IDP camps and villages.

- Investigate all allegations of violence against women, protect witnesses and victims from any retaliation, prosecute perpetrators and compensate survivors.

While the establishment of the National Commission for the investigation of rape is a positive initiative, it is necessary that the Commission:

- Diversify its composition to include social workers, and medical staff;
- Improve its data collection methods and collaborate with the United Nations and non-governmental organizations (NGOs) in this regard.

Representative of the Secretary-General on internally displaced persons (E/CN.4/2005/8, paras 41, 42 and 46):

41. Addressing the security situation must be the absolute priority. All attacks on the civilian population need to be stopped. The Government can, of course, immediately stop its armed forces and militias under its control from attacking civilian populations. It can also facilitate, further to its commitment to the United Nations, access to Darfur of United Nations human rights monitors, whose presence on the ground in the camps and in areas of return is crucial. While the internally displaced do not feel it is safe to return to their villages, their aspiration is to go back when it is safe to do so. Ensuring that return takes place in safety and with dignity must be the guiding principle. This will require that the Janjaweed militia and other armed groups be disarmed or otherwise neutralized and that all ties between them and the Government be severed. Given the alliance between the Government and the Janjaweed, it would be more pragmatic for the Government to work closely and transparently with the international community, and specifically with the AU, to take appropriate measures for disarming or neutralizing them and their threat. Since the internally displaced and other civilians in the conflict zones are fearful of all security forces, including the state and national police, international training on the ground and possible deployment of CIVPOL or other police officers from AU countries could help foster confidence in national police protection, as mentioned in paragraph 23.

42. (...) There is also an urgent need for the humanitarian community to significantly increase the number of staff on the ground, who, in addition to providing the required assistance, would also have a significant protection role in preventing further human rights violations against the internally displaced and returnees. In the immediate term, an urgent priority is to ensure that the required humanitarian assistance and protection reach all the needy populations of Darfur. (...)

46. (...) The expansion of the role of the AU to enable it to protect civilians would be an important step towards meeting security problems in the area.

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7/Add.2, paras. 57 to 59 and 61):

57. Regrettably, I have to conclude that there is overwhelming evidence that extrajudicial killings of civilians in Darfur have been carried out, with some exceptions, in a coordinated manner by the armed forces of the Government and Government-backed militias. They appear to be carried out in a systematic manner and could be termed grave violations of human rights. There are strong indications that the scale of violations of the right to life in Darfur could constitute crimes against humanity for which the Government of the Sudan must bear responsibility. It is my distinct impression that extrajudicial killings of the Shilook people were carried out by Nuer militia who were armed and sponsored by the Government of the Sudan. The manner in which the death penalty is imposed and carried out in the Sudan does not conform to the safeguards and restrictions under international customary law.

58. I remain seriously concerned at the very slow and negligent reaction of the Government towards the situation unfolding in Darfur. Such a reaction despite the huge international outcry would appear to indicate either complete disrespect for the right to life of the population of Darfur, or, at worst, complicity in the events. It is absolutely crucial that the Government begin to send clear and unambiguous signals, accompanied by swift action, in order to ensure the protection of the right to life of these people. The trauma of Darfur has shaken society in the Sudan, which for a long time has wished for to end to the violence and for peace. This is an opportunity which the Government of the Sudan must seize. (...)

59. The immediate priority is to ensure effective humanitarian assistance and human rights protection to the vulnerable populations in Darfur as well as in the South in order to safeguard the right to life of the people of the Sudan. All attacks against the civilian population must stop. The Government must immediately ensure that all militias are disarmed, that the actions of the PDF remain under its firm control and that all members of the PDF are properly screened. (...)

61. I recommend that the Government of the Sudan undertake a comprehensive revision of the national legislation concerning the death penalty with a view to ensuring that it conforms to international standards. A comprehensive review of the cases of all persons on death row should be undertaken to ensure that international minimum standards were met in the course of their trials.

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7/Add.2, para. 60):

60. Accountability is crucial in any peace process, as many of the key causes of the conflict relate to perceptions of injustice and discrimination. The Government of the Sudan must make every effort to end the culture of impunity. In the context of Darfur, a positive development is the setting up of the National Commission of Inquiry, and I hope that the Commission will take into account violations of human rights allegedly committed by the security forces. However, the Commission of Inquiry can only partly address the issue of accountability. Ultimately, it is the obligation of the Government to ensure the delivery of justice and that witnesses and victims are protected. However, it is my impression that the accountability process in the Sudan will be seriously flawed unless the international community closely monitors it, and possibly even assists. In this regard, it is of the utmost importance that investigations be carried out to ascertain the details of the events in Darfur, including extrajudicial killings, and to bring the alleged perpetrators to justice. International actors are best suited to carry out these investigations in order to ensure that they are carried out in accordance with international legal standards and to send a public message that they will be impartial.

#### **IX. Situation of specific groups**

##### **IDPs**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.5, para. 9):

9. Female IDPs endure security concerns, the trauma of rape and loss, health problems and heightened risk of HIV/AIDS infection, domestic violence and poverty.

Representative of the Secretary-General on internally displaced persons (E/CN.4/2005/8, para. 41):

41. Addressing the security situation must be the absolute priority. All attacks on the civilian population need to be stopped. The Government can, of course, immediately stop its armed forces and militias under its control from attacking civilian populations. It can also facilitate, further to its commitment to the United Nations, access to Darfur of United Nations human rights monitors, whose presence on the ground in the camps and in areas of return is crucial. While the internally displaced do not feel it is safe to return to their villages, their aspiration is to go back when it is safe to do so. Ensuring that return takes place in safety and with dignity must be the guiding principle. This will require that the Janjaweed militia and other armed groups be disarmed or otherwise neutralized and that all ties between them and the Government be severed. Given the alliance between the Government and the Janjaweed, it would be more pragmatic for the Government to work closely and transparently with the international community, and specifically with the AU, to take appropriate measures for disarming or neutralizing them and their threat. Since the internally displaced and other civilians in the conflict zones are fearful of all security forces, including the state and national police, international training on the ground and possible deployment of CIVPOL or other police officers from AU countries could help foster confidence in national police protection, as mentioned in paragraph 23.

## **Women**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.5, para. 9):

9. The fact that the majority of the households in the camps are headed by women exasperates their vulnerability to violence and exploitation.

The Government must:

- Facilitate the full involvement of women and women's groups in the peace process in accordance with Security Council resolution 1325 (2000) and ensure that women's needs and interests are included in all negotiations.
- Ensure the security of civilians and introduce protection measures to reduce the ongoing risk of rape, beatings and abductions for women and girls when they move outside IDP camps and villages.
- Investigate all allegations of violence against women, protect witnesses and victims from any retaliation, prosecute perpetrators and compensate survivors.
- Ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples Rights on the rights of women in Africa.
- Request technical cooperation from OHCHR, DAW, DESA in regards to the implications of ratification of these instruments.
- Commence a dialogue for the improvement of the legal protection of women's rights in Sudan, and effectively implement current obligations under international law

## **X. Comments from the Government** <sup>39</sup>

n/a

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<sup>39</sup> As published as official documents of the CHR.



## TURKEY

### Introduction

During the period under review, the Special Representative on the situation of human rights defenders visited the country (please refer to document E/CN.4/2005/101/Add.3).

### **I. Institutional and legal framework for the promotion and protection of human rights**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.3, paras. 111 to 114, 119, 122, 123 ):

111. In this respect, the Special Representative calls on the Turkish Government to continue reviewing its laws to ensure full compliance with international human rights standards. In particular, she calls on the Turkish Government to:

- Further review its laws to ensure that freedom of expression is fully guaranteed;
- Review its interpretation of national security to exclude all activities in the defense of human rights;
- Review laws regulating trade unions and collective bargaining to ensure defenders can freely engage in the defense of social and labor rights;
- Further reforms in the area of cultural and religious rights to ensure defenders can work on cultural issues and freedom of belief unimpeded;
- Revise the law so that civil servants can freely engage in civil actions and trade unions activity;
- Further review regulation to ensure that freedom of assembly is fully guaranteed.

112. While she recognizes that the new law on freedom of association represent an impressive move towards establishing a conducive environment for activities in the defense human rights, she encourages the Turkish Government to ensure that:

- Administrative steps to set up an NGO are simplified;
- Administrative irregularities do not result in criminal charges or heavy fines;
- Human rights organizations can receive funding from within Turkey and abroad and participate in national and international networks of actions in all field of human rights without undue restrictions
- Provisions granting governmental body the authority to review and interpret the scope of NGOs' statute are revised
- Provisions regarding the personal liability of NGO board members are removed

113. She encourages the Government to further its efforts in view of creating a real culture of human rights within the Turkish State and recommends that the personnel of the Department of Association and Directorate for Foundations be trained on the new law on Association, and relevant instruments of international law, in particular the Declaration on human rights defenders.

114. The Special Representative believes that human rights boards can prove a fruitful initiative and important avenues for communication and dialogue between government and NGOs if more attention is paid with regards to reforming their structure. She thus recommends that the government review the effectiveness and functionality of human rights boards and engage constructively human rights NGOs to assess the most effective mechanisms to address human rights violations at the local level.

119. She urges the Government to ensure the speedy implementation of the reforms and to communicate its strong will to get results from the reform process to all levels of governance. In particular, she calls for:

- Issuing circulars giving instructions on how to interpret and apply the law in practice;
- Monitoring of the implementation of the new laws by the judiciary at the local level in particular with regards to cases involving freedom of expression;
- Increased training of the judiciary, security forces and governorship on the aims and intent of the new laws;
- Increased tolerance to criticism in particular in the areas of democratic reforms, fundamental freedom, social rights and minority rights.

122. In view of the on-going reforms, she calls on the judiciary, in particular Prosecutors to exercise their discretion and show restraint in initiating cases against human rights defenders and organization in order to decrease the numbers of unjustifiable cases against human rights defenders.

123. She urges the Government to ensure that harassment of human rights defenders is not perpetuated by new means, in particular:

- She recommends that all case pending against human rights defenders be reviewed and explore the possibility of withdrawing pending prosecutions to ease the situation of Human Rights Defenders;
- She calls on the Government to ensure that prosecutions are no longer launched against human rights defenders for action in the defense of human rights
- She recommends training the judiciary, security forces and regional state authorities to detect human rights activities and distinguish the promotion of internationally recognized rights from illegal activity. In particular, she suggests training on the 1998 UN Declaration on human rights defender to ensure full understanding of the activities and rights of those working in the defense of human rights to overcome old perception and resistance against them<sup>40</sup>.

Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes (E/CN.4/2005/44, paras. 98 and 102):

98. An estimated 250 laws and regulations were in preparation at the time of the Special Rapporteur's visit and the Prime Minister committed himself to implementing them as soon as they were adopted, in the course of 2004. The Special Rapporteur hopes that a task of this amplitude will be carried out with the participation of all concerned parties, including NGOs and other members of civil society. She expresses the hope that the participatory mechanisms will be preserved and strengthened and that more attention will be given to the implementation modalities of the draft laws being prepared and the laws and regulations that have already been adopted.

102. Other recommendations based on her findings from the mission to Turkey but not listed in order of importance are the following:

- Turkey should ratify the Stockholm Convention, the Rotterdam Convention, and the Offshore Protocol and the Hazardous Wastes Protocol to the Barcelona Convention;

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<sup>40</sup> In its comments on the report the Government has informed the Special Representative that intensive training programs are carried out by the Ministry of Justice, sometimes in cooperation with foreign institutions. 9000 judges and public prosecutors attended seminars in 2004, organized jointly by the Ministry of Justice, the Council of Europe, and the European Union in 9 different regions. She regrets that despite her efforts she did not get the opportunity to meet with the Minister of Justice so that she could learn and have more extensive discussions about this initiative in order to make conclusions regarding their efficacy or impact.

- Turkey should ratify the Aarhus Convention and give priority to developing the infrastructure necessary to make implementation of the provisions of the Aarhus Convention possible;
- Turkey should adopt the approach proposed in the Regional Plan for the Reduction of the Generation of Hazardous Waste from Industrial Installations by 20 per cent by the year 2010, as recommended in the report of the 13th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols that took place from 11 to 14 November 2003;
- A national environment agency should be created and attention be paid to the local administration and institution through which public participation could be strengthened. More emphasis should be given to the implementation of the stated objective of waste reduction as a primary policy goal and for the implementation and enforcement of the Hazardous Waste Control Regulation;
- Policies should be implemented that ensure more effective control of wastes entering Turkey;
- An inventory of toxic substances and a general inventory of chemical substances used in Turkey should be established;
- A survey on the existence of DDT and other stockpiles of POPs in Turkey should be conducted and the results made public;
- NGO participation and access to information in environmental matters must be guaranteed, subject only to the kinds of exemptions listed in international human rights instruments and the Aarhus Convention;
- Trade union laws should be amended to fully comply with international labour standards.

## **II. Non-discrimination and equality before the law**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.3, paras. 115 and 116)

115. The Special Representative expresses her deep concern at continuing practices of harassment of human rights defenders and urges the Government to put an end to practices stigmatizing human rights defenders, in particular:

- Put an end to monitoring, surveillance and intelligence gathering on human rights defenders and organizations;
- Refrain from public statements questioning the legitimacy and aims of human rights organizations;
- Ensure full access for defenders to places of detention, and information and statistics on governmental policies;
- Ensure that defenders can engage in international cooperation without reprisal.

116. The Special Representative is deeply disturbed by the continued perception of human rights defenders as potential threats to the Turkish State. She calls on State officials and the media to refrain from stigmatizing human rights defenders as “enemies” in their public speeches and broadcast.

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.3, paras. 115 and 116)

115. The Special Representative expresses her deep concern at continuing practices of harassment of human rights defenders and urges the Government to put an end to practices stigmatizing human rights defenders, in particular:

- Put an end to monitoring, surveillance and intelligence gathering on human rights defenders and organizations;
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- Ensure that defenders can engage in international cooperation without reprisal.

116. The Special Representative is deeply disturbed by the continued perception of human rights defenders as potential threats to the Turkish State. She calls on State officials and the media to refrain from stigmatizing human rights defenders as “enemies” in their public speeches and broadcast.

### **IV. Administration of justice and the rule of law**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.3, paras. 115, 120, 122 and 123)

115. The Special Representative expresses her deep concern at continuing practices of harassment of human rights defenders and urges the Government to put an end to practices stigmatizing human rights defenders, in particular:

- Put an end to monitoring, surveillance and intelligence gathering on human rights defenders and organizations;
- Refrain from public statements questioning the legitimacy and aims of human rights organizations;
- Ensure full access for defenders to places of detention, and information and statistics on governmental policies;
- Ensure that defenders can engage in international cooperation without reprisal.

120. The Special Representative recognizes efforts to hold internal investigation on human rights abuses. She remains concerned, however, by the high level of impunity for human rights violation. She thus calls on the Government of Turkey to take all necessary measures to ensure full accountability for human rights violations. In particular, the Special Representative calls for the suspension of agents suspected of misconduct and for the immediate and permanent removal from their posts of those who have been found guilty.

122. In view of the on-going reforms, she calls on the judiciary, in particular Prosecutors to exercise their discretion and show restraint in initiating cases against human rights defenders and organization in order to decrease the numbers of unjustifiable cases against human rights defenders.

123. She urges the Government to ensure that harassment of human rights defenders is not perpetuated by new means, in particular:

- She recommends that all case pending against human rights defenders be reviewed and explore the possibility of withdrawing pending prosecutions to ease the situation of Human Rights Defenders;
- She calls on the Government to ensure that prosecutions are no longer launched against human rights defenders for action in the defense of human rights
- She recommends training the judiciary, security forces and regional state authorities to detect human rights activities and distinguish the promotion of internationally recognized rights from illegal activity. In particular, she suggests training on the 1998 UN Declaration on human rights defender to ensure full understanding of the activities and rights of those working in the defense of human rights to overcome old perception and resistance against them.

Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes (E/CN.4/2005/44, para. 98):

98. An estimated 250 laws and regulations were in preparation at the time of the Special Rapporteur's visit and the Prime Minister committed himself to implementing them as soon as they were adopted, in the course of 2004. The Special Rapporteur hopes that a task of this amplitude will be carried out with the participation of all concerned parties, including NGOs and other members of civil society. She expresses the hope that the participatory mechanisms will be preserved and strengthened and that more attention will be given to the implementation modalities of the draft laws being prepared and the laws and regulations that have already been adopted.

## **V. Fundamental freedoms**

Special Representative on the situation of Human Rights Defenders (E/CN.4/2005/101/Add.3, paras. 116 and 117)

116. The Special Representative is deeply disturbed by the continued perception of human rights defenders as potential threats to the Turkish State. She calls on State officials and the media to refrain from stigmatizing human rights defenders as "enemies" in their public speeches and broadcast.

117. The Special Representative believes that a dialogue between Government and human rights organizations is critical to transforming the environment of mutual suspicion. In this respect, she calls on both Government and NGOs to engage in constructive dialogue and on the media to inculcate a better understanding for the work of human rights defenders so that respect for human rights is supported by all within Turkish society. She encourages the Government to ensure that:

- Defenders are involved in all initiatives pertaining to human rights so that these gain credibility and effectiveness;
- Serious consultations are carried out on new legislations and initiatives for the promotion and protection of human rights.

Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes (E/CN.4/2005/44, paras. 98 and 102):

98. An estimated 250 laws and regulations were in preparation at the time of the Special Rapporteur's visit and the Prime Minister committed himself to implementing them as soon as they were adopted, in the course of 2004. The Special Rapporteur hopes that a task of this amplitude will be carried out with the participation of all concerned parties, including NGOs and

other members of civil society. She expresses the hope that the participatory mechanisms will be preserved and strengthened and that more attention will be given to the implementation modalities of the draft laws being prepared and the laws and regulations that have already been adopted.

102. Other recommendations based on her findings from the mission to Turkey but not listed in order of importance are the following: [...]

- NGO participation and access to information in environmental matters must be guaranteed, subject only to the kinds of exemptions listed in international human rights instruments and the Aarhus Convention;

## **VI. Economic and social rights**

Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes (E/CN.4/2005/44, para. 101):

101. Regarding the specific issue of ship dismantling, the Special Rapporteur is aware of the economic advantages that accrue from such activities, while underlining their social, human and environmental costs, as well as the enormous risks that they pose for the lives, health and rights of the workers and others who may be exposed. She makes the following recommendations:

- Efforts to improve working conditions and control of the activities must be continued and strengthened;
- Special measures should be taken to strengthen unionization among the workers in the ship dismantling industry;
- Studies should be made to determine the risks and illnesses to which workers in the sector are exposed and ways of preventing them. The workers must be ensured access to the results of these studies as well as to the computer files and statistics on occupational accidents, which must be kept up to date;
- The Government should maintain the prohibition on the entry and demolition of ships contaminated by toxic products, in particular asbestos, as long as the country has not developed the capacity to ensure optimal protection of workers and rational ecological management during the dismantling and the final disposal of the dangerous and toxic wastes that are recovered;
- Countries of origin should take measures to decontaminate ships before exporting them for dismantling;
- Countries of origin should accept the return of illegally exported contaminated ships as well as any recovered toxic product that could not be eliminated by the dismantling country;
- On the multilateral level, States should work to elaborate binding norms and directives to set responsibilities and define the rules and mechanisms for the management and control of ship dismantling activities.

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

118. She encourages the Government to show increased tolerance for criticism and see civil society as a partner in the on-going transformation. As such she encourages the State to make use of NGO reports to assess the impact of state policies with regards to human rights, and to engage in constructive debates on how to best address remaining problems to ensure full implementation of the reform process.

## **IX. The right to development and international cooperation**

Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes (E/CN.4/2005/44, paras. 100 and 101):

100. The Special Rapporteur notes with concern the different attempts of illegal transfers of waste and dangerous products toward Turkey. She condemns such actions, and strongly urges the countries of origin to accept the return of the waste and dangerous products. She recommends that the Secretariat of the Basel Convention continue to assist Turkey in its efforts to find solutions to the cases highlighted in this report.

101. Regarding the specific issue of ship dismantling, the Special Rapporteur is aware of the economic advantages that accrue from such activities, while underlining their social, human and environmental costs, as well as the enormous risks that they pose for the lives, health and rights of the workers and others who may be exposed. She makes the following recommendations: [...]

- Countries of origin should accept the return of illegally exported contaminated ships as well as any recovered toxic product that could not be eliminated by the dismantling country;
- On the multilateral level, States should work to elaborate binding norms and directives to set responsibilities and define the rules and mechanisms for the management and control of ship dismantling activities.

## **X. Comments from the Government** <sup>41</sup>

Observations of the Government of Turkey on the Report of Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders, on her mission to Turkey (E/CN.4/2005/G/29)

1. Upon the invitation of the Government of Turkey, Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders visited the country from 11 to 20 October 2004. Turkey is among the states which have extended a standing invitation to thematic procedures of the Commission on Human Rights (CHR) and is strongly committed to cooperating with these procedures.<sup>42</sup> Ms. Jilani's visit to Turkey was another example of such cooperation. Like other mandate holders who visited Turkey, the Special Representative enjoyed the full cooperation of the Turkish authorities, which is noted with satisfaction in the report.

2. Ms. Jilani's report on her mission to Turkey (E/CN.4/2005/101/Add.3 and the relevant Corrigendum) was carefully examined by the relevant Turkish authorities with a view to benefiting from its findings and conclusions. With this document the Government of Turkey would like to offer its observations on the report.

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<sup>41</sup> As published as official documents of the CHR.

<sup>42</sup> So far, since 1999, Special Rapporteur on torture, Special Rapporteur on freedom of religion or belief, Representative of the Secretary General on internally displaced persons, Special Rapporteur on education, Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Special Rapporteur on extrajudicial and arbitrary executions and lately Special Representative of the Secretary General on human rights defenders visited Turkey. A visit by the Working Group on Arbitrary Detention to Turkey in 2005 is envisaged. Turkey also takes immediate action to look into the cases that are communicated to her by the Special Mechanisms.

3. In line with its strong commitment to the cause of human rights and democracy, the Turkish Government regards human rights defenders as an essential element of a vibrant civil society and spares no effort to create favourable conditions for their effective functioning. The entry into force of the new Law on Associations on 23 November 2004, as well as the Circular of the Ministry of the Interior dated 18 October 2004 on human rights defenders<sup>43</sup> are only some of the recent concrete manifestations of this understanding. Thanks to these sincere efforts, there exists, as noted in paragraph 55 of the report, “*a genuine and active human rights community in Turkey which is actively implanted throughout the country including NGOs branches at the municipal level*”.

4. At the outset, it should be noted that there are encouraging findings in the report, not only on the situation of human rights defenders in Turkey, but also on the remarkable changes recorded recently to attain the highest possible standards in the field of human rights. It is particularly heartening to read the assessment of the Special Representative that the number, scope and pace of reforms have made it difficult to monitor all developments. The Special Representative stresses that she is encouraged by the genuine efforts of the Turkish Government to move forward with its reforms in the field of human rights (paragraph 98).

5. Despite the foregoing, the Government respectfully disagrees with some of the points in the report with the following reasons.

5.1. One important issue in this context is the characterization of the PKK terrorist organization. The report makes a number of references to the PKK, without referring to its activities of terrorist nature and thus giving the impression that it stands as a mere political party. The Government, in its preliminary comments offered to the Special Representative, recalled that the PKK and its aliases “Kurdistan Freedom and Democracy Congress” (KADEK) and the “Kurdistan Peoples Congress” (KONGRA-GEL) had been declared as terrorist groups by the European Union and the USA, and should be referred to as such. The Special Representative, however, responded in a footnote by stating that “*she does not find it either necessary or relevant to make any characterizations*”. The Government, nevertheless, would like to put it once again on the record that the PKK and its successor organizations are among the most dangerous terrorist organizations in the world, which are responsible for the death of over 30,000 Turkish citizens, particularly of Kurdish origin, and that the omission of the characterization of the PKK without referring to its terrorist character is neither understandable nor acceptable.

5.2. Another point of disagreement relates to references made to the so-called “armed conflict” in Turkey. Given the internationally acknowledged terrorist nature of the PKK, Turkey’s struggle against the PKK should *not* be portrayed as an armed conflict, since it is nothing, but a “fight against terrorism”.

5.3. One of the major steps taken towards creating more favourable conditions under which human rights defenders will operate is the enactment of the new Law on Associations

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<sup>43</sup> The Circular entrusts the provincial and district governorships with the task of ensuring that the public institutions act according to the letter and spirit of the EU Guidelines and provide all facilities in their relations with individuals and NGOs endeavouring to promote human rights, including NGOs active in areas such as the prevention of torture and maltreatment, enhancement of the social status of women and elimination of gender-based discrimination.



which was adopted on 17 July 2004 and entered into force on 23 November 2004.<sup>44</sup> Although the report refers to and welcomes the adoption of the new law, it nevertheless cites in several paragraphs<sup>45</sup> numerous cases of shortcomings which occurred due to the provisions of the previous Law. The legal grounds leading to unfavorable cases mentioned in the report have already been rectified by the new legislation. This significant aspect should have received a wider coverage in the report. Therefore, the Government deems it unfair that this important fact did not find its explicit expression.

5.4. Contrary to many encouraging words used to appraise the efforts of the Government, the Special Representative, who expresses her deep concerns at the allegedly continuing practices of harassment of human rights defenders, argues that all defenders have suffered in Turkey and urges the Government to ensure that harassment of human rights defenders is not perpetuated by new means. The language used here by the Special Representative unfortunately overlooks the existing collaboration between the Government and the human rights defenders. We believe that the functions of the Human Rights Advisory Council<sup>46</sup>, which is referred to in paragraph 40, as well as its composition are proofs against this oversight. The composition of the Human Rights Boards<sup>47</sup>, established in all provinces and districts throughout the country, also refutes the erroneous judgement, if not an honest mistake.

5.5. It is understood from paragraph 61 that the human rights defenders, with whom the Special Representative met in Turkey, argued that although their personal safety had improved, they were being targeted by legal action and fines. In paragraph 108 though, the Special Representative stresses that she is encouraged by the positive role that the country's highest Courts have started to play as guardians of fundamental freedoms, and again in paragraph 34, she

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<sup>44</sup> To cite just a few changes brought by this major legislative change, the new law foresees, inter alia, that every legal and real person may establish associations without prior permission; there shall be no restrictions on the international activities and cooperation of the associations; prior notification to the relevant administrative authority shall be sufficient for obtaining financial aid or aid given in kind from abroad; associations shall purchase real property upon the decision of their relevant bodies; security forces shall neither enter the premises of the associations nor confiscate their property without a decision by the competent court or a written order by the highest administrative authority on grounds of the maintenance of public order or the prevention of the commitment of crime, where such written orders shall later be submitted to the approval of the competent judge within 24 hours.

<sup>45</sup> Paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 77, 78.

<sup>46</sup> The Human Rights Advisory Council drafts recommendations for the consideration of the Government with regard to human rights policy and matters related to its implementation. The composition of the Council ensures active participation by the NGOs in the decision-making process. The majority of its members are civil society representatives, including the Bar Association and the Medical Association. The Council convenes regularly and produces concrete proposals. The Human Rights Presidency of the Prime Ministry serves as the secretariat of the Council.

<sup>47</sup> The Boards are entrusted with investigating complaints and allegations of human rights abuses, and thereafter transmitting their findings to competent authorities for administrative and/or legal action. They also conduct programmes for human rights education at the local level. Representatives of academic institutions, bar associations, medical chambers, trade and industry unions, NGOs, media as well as local administrations participate in the work of the Councils.

underlines that existing judicial institutions, benefiting from the constitutional and legal reforms, have started working as guardians of fundamental freedoms.

5.6. Paragraphs 66 and 67 argue that the policing of demonstration remains an area of concern for defenders, that cases where police officers outnumber demonstrators are numerous, and that reports of use of excessive force against protestors, in particular students and trade unions, continue, and, last but not least, that due to continuing restrictions on authorized locations for demonstrations, many protests are considered illegal. In the view of the above assessment, the Special Representative emphasizes that it is the responsibility of the State to show restraint in its methods of crowd control.

Regarding peaceful demonstrations as an inherent attribute of a pluralistic society, the Government, through the Ministry of the Interior, already issued a Circular on 17 August 2004 on the prevention and punishment of disproportionate use of force by security forces. The Circular was addressed to all provincial governorates and all the relevant branches of the Ministry.

6. The Government has also noted the recommendations contained in the report with a view to benefiting from them. Nevertheless, the Government deems it necessary to put the following clarifications on record to indicate that a majority of the recommendations have already been taken into consideration and put into practice with concrete actions well before the visit of the Special Representative. The lack of sufficient recognition in some fields could be attributed to the sheer number of reforms adopted.

6.1. Paragraph 108 emphasizes the Special Representative's satisfaction with the Governmental initiatives and policies to develop a culture of human rights. It is also noteworthy that, as part of these efforts, the idea of establishing the institution of ombudsman in Turkey is under consideration. A draft law on the establishment of the institution of ombudsman is expected to be soon submitted to the Parliament for enactment.

6.2. Paragraphs 110 and 111 refer to the need for the full implementation of reforms at all levels of governance. In this respect, the Special Representative calls on the Government to continue reviewing its laws to ensure full compliance with international human rights standards. The Government regards the reform process as a continuous practice and believes that there is always room for improvement in the field of human rights.

6.3. In paragraph 112-a, the Special Representative encourages the Government to ensure the simplification of administrative steps to set up an NGO. With the introduction of the new Law on Associations, this has already been done by allowing every legal and real person to establish associations without prior permission.

6.4. In paragraph 112-c, and again in paragraph 115-d, the Special Representative encourages the Government to ensure that human rights organizations can receive funding from within Turkey and abroad, participate in national and international networks of actions in all fields of human rights without undue restrictions, and engage in international cooperation without facing reprisal. According to the new changes introduced by the Law on Associations, which were partly mentioned in paragraph 26 of the report, no restrictions shall be imposed on international activities and cooperation of the associations and they are not required to obtain prior permission to hold meetings with representatives of foreign organizations. Associations are no longer obliged to notify the Governor's Office prior to sending representatives abroad or inviting foreign persons, and notification of the relevant administrative authority shall be sufficient for obtaining financial or in-kind aid from abroad.

6.5. The Special Representative, as put forth in paragraph 114, believes that Human Rights Boards can prove to be a fruitful initiative and important avenues for communication and dialogue between the Government and NGOs if more attention is paid with regards to reforming their structure. It should be reminded that the structure of the Human Rights Boards had already been changed in 2003 by removing the seats of law enforcement agencies, constituting a clear move towards ensuring their civilian nature.

6.6. In paragraph 115-a, the Special Representative urges the Government to put an end to the monitoring on human rights defenders and organizations. The Ministry of the Interior issued a Circular on 11 May 2004 which stipulates that general assembly meetings of NGOs held in accordance with the Law on Associations, meetings and demonstration marches falling under the scope of the Law on Meetings and Demonstration Marches as well as other activities of NGOs which are not covered by the said Laws, such as press conferences, seminars and panels, shall not be recorded, photographed or filmed by law enforcement agencies.

6.7. The Turkish Government does not regard human rights defenders “as potential threats to the Turkish State”, as argued in paragraph 116. It rather views them as essential elements of a vibrant civil society, with which cooperation and constant dialogue are necessary to attain perfection in human rights standards. As mentioned above, the compositions of the Human Rights Advisory Council and of provincial or district Human Rights Boards, which bring state officials with civil society representatives, constitute a manifestation of this understanding.

6.8. In paragraph 117, the Special Representative encourages the Government to ensure that defenders are involved in all initiatives pertaining to human rights, so that they could gain credibility and effectiveness; and that serious consultations are carried out on new legislations and initiatives for the promotion and protection of human rights. The recent comprehensive legislative changes as well as administrative measures have been crafted through a real collaborative process, taking the views of the civil society and academic circles into consideration. A solid case in point is the new Penal Code, the drafting process of which was marked with transparency. The Code was a result of a comprehensive drafting process in which the Council of Europe as well as local and international NGOs were involved.

6.9. In paragraph 119-a, the Special Representative calls for issuing circulars giving instructions on how to interpret and apply the law in practice. The Government will certainly continue to issue circulars regarding the implementation of new laws when need be, as numerous circulars have already been issued well before the visit of the Special Representative.

6.10. In paragraph 119-b, the Special Representative calls for monitoring the implementation of the new laws by the judiciary at the local level in particular with regard to cases involving freedom of expression. The independent judiciary has already started to deliver rulings in line with the spirit and wording of the new laws. In that context, the Government would like to reiterate its satisfaction with the Special Representative’s acknowledgment of the positive role that the country’s highest Courts have started to play as guardians of fundamental freedoms.

6.11. In paragraph 119-c, and again in paragraph 123-c, the Special Representative points out to the need to train the judiciary, security forces and governorship personnel on the aims and the intent of the new laws and on the UN Declaration on human rights defenders. Acknowledging the importance of training, the Government has already undertaken various training programs for the aforementioned, including programs organized in cooperation with other states and international organisations, the Council of Europe and the European Union in particular. Meanwhile, the

above-mentioned Circular of the Ministry of the Interior dated 18 October 2004 on human rights defenders stipulates that the issues outlined in the EU Guidelines on Human Rights Defenders be included in the curricula for the staff of the Gendarmerie General Command, the General Directorate of Security, the Coast Guard Command, the Head Department of Education and Governorships.

6.12. In paragraph 120, as well as in paragraphs 95, 96 and 97, the Special Representative, though recognizing the efforts to hold internal investigation on human rights abuses, remains concerned by “the high level of impunity for human rights violations” and thus calls on the Government to take all necessary measures to ensure full accountability for those violations. While the Government is resolute to combat against impunity at all levels, it would have been more appropriate should concrete cases of alleged practices of impunity have been cited. Recognizing the importance of combating impunity in all human rights violations, a considerable number of legislation has been introduced in the last years to ensure that perpetrators are brought to justice. The judicial review is functioning effectively in Turkey. In case of appeals, the decisions of the judiciary are reexamined by the higher judicial bodies. Moreover, Turkey has recognised the right to individual petition to as well as the compulsory jurisdiction of the European Court of Human Rights (ECtHR). After the exhaustion of the domestic remedies individuals or groups of individuals have the right to apply to the ECtHR.

6.13. In Paragraphs 121, 122 and 123, the Special Representative recommends that all cases pending against human rights defenders be reviewed and the possibility of withdrawing pending prosecutions against human rights defenders be explored to ease their situation. The Special Representative further calls on the Government to ensure that prosecutions are no longer launched against human rights defenders for action in the defence of human rights, and on the members of the judiciary, in particular prosecutors, to exercise their discretion and show restraint in initiating cases against human rights defenders and organizations.

In response to these calls and recommendations, the Government would like to quote Article 138 of the Constitution: “Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming to the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.” Meanwhile, it is a fundamental principle of the rule of law that non-compliance with existing laws be brought to justice. Human rights defenders are not immune from this principle. Therefore, activities of NGOs should certainly be within the parameters of the legislation and actions breaching the law will be referred to judicial authorities.

7. In conclusion, it should be underlined that Turkey is truly committed to the cause of democracy and human rights. The Government is resolute to carry on the reform process, and regards the representatives of civil society, including human rights defenders, as essential elements and partners in its drive to attain the highest democratic standards. The Government has been and will be open to constructive and sincere criticisms levelled against certain imperfections in the democratisation process. With this understanding, Turkey stands ready to maintain the ongoing dialogue and cooperation with the Special Representative.

## OCUPIED PALESTINIAN TERRITORIES

### Introduction

During the period under review, the following special procedures visited the Occupied Palestinian Territories:

- The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (please refer to document E/CN.4/2005/29).
- The Special Rapporteur on violence against women, its causes and consequences (please refer to document (E/CN.4/2005/72/Add.4).

### I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (E/CN.4/2005/29, para. 41)

41. The Special Rapporteur calls upon the Government of Israel to honour the advisory opinion of the International Court of Justice, which was approved by the General Assembly by 150 votes in favour on 20 July 2004. The International Court, the judicial organ of the United Nations, has pronounced itself almost unanimously against the legality of the Wall. Israel is therefore in law required to dismantle the Wall and to compensate Palestinians who have suffered as a result of its construction. If the Government of Israel declines to do this, it should at least honour the judgement of its own Supreme Court sitting as the High Court of Justice in the *Beit Sourik Village Council* case. From this judgement, it is clear that substantial portions of the already constructed Wall fail to comply with the principles of proportionality expounded by the High Court. There is no reason why the Wall should not be dismantled where it fails to meet these requirements.

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Government of Israel and the Palestinian Authority must:

- Move ahead with the implementation of the Quartet's road map<sup>48</sup> in order to end the occupation of Palestinian territories and to establish a viable independent and sovereign Palestinian State, while ensuring peace and security for the Israelis. Any solution to the conflict and occupation must be multilateral in accordance with the road map;
- Facilitate the full involvement of Palestinian and Israeli women and women's groups in the peace process in accordance with Security Council resolution 1325 (2000), and ensure that women's needs and interests are included in all negotiations. Women's representation at the negotiating table is crucial as the sine qua non of gender equality and inclusion;

The Palestinian Authority must:

- Work towards the creation of a democratic, secular State, which promotes and protects women's rights;
- Adopt a policy of zero tolerance towards all forms of violence, including terrorism;

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<sup>48</sup> A performance-based "road map" to a permanent two-State solution to the Israeli-Palestinian conflict; see S/2003/529 of 7 May 2003.

- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence;
- Undertake legislative reform in line with international standards, particularly of the Personal Status Codes, to have a common Palestinian family law for both West Bank and Gaza that is based on participatory and democratic relations within the family. Similarly, revise the Penal Code to criminalize domestic violence, honour crimes and sexual assaults on women;
- Adopt the Bill of Rights for Women, and measures to ensure its effective implementation and consider the other numerous draft bills submitted to improve the protection of women's rights;
- Provide the necessary legal, political and financial support to the Ministry of Women's Affairs;
- Work towards a system of positive discrimination as a means of eliminating structural discrimination against women and to increase female representation in the Palestinian Authority, Palestinian Legislative Council and local government bodies, municipalities and village councils, including the introduction of a quota system as demanded by the women's organizations for local and national elections;
- Undertake measures to achieve equality between women and men and end violence against women, including by awareness-raising campaigns, curriculum change, training in gender sensitivity to all relevant actors and mental health and trauma counseling as well as shelters for women who are victims of violence or those who are at risk of violence;

The international community must:

- Authorize, by way of a Security Council decision, an international mechanism in the Occupied Palestinian Territories to ensure the observance of international human rights and humanitarian law and the protection of civilians, and work with both Israel and the Palestinian Authority to implement existing resolutions;
- Enhance the capacity of the Authority to enable it to act in accordance with its obligations to promote and protect the Palestinian people and fulfil its responsibilities towards the achievement of a sustainable peace in the area;
- Support, through bilateral and multilateral funding, initiatives of women's non-governmental organizations, research institutes and academia in the OPT to improve women's status, end violence against women and promote the overall betterment of Palestinian society;
- Support the peace efforts of Palestinian and Israeli women and facilitate their participation at all phases of the conflict resolution/peace-building process;
- Expand the mandate of the OHCHR field office in the OPT to include a monitoring of human rights violations in addition to its current technical cooperation role.

## **II. Non-discrimination and equality before the law**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Palestinian Authority must:

- Adopt a policy of zero tolerance towards all forms of violence, including terrorism;
- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence;
- Undertake legislative reform in line with international standards, particularly of the Personal Status Codes, to have a common Palestinian family law for both West Bank and Gaza that is based on participatory and democratic relations within the family.

Similarly, revise the Penal Code to criminalize domestic violence, honour crimes and sexual assaults on women;

- Adopt the Bill of Rights for Women, and measures to ensure its effective implementation and consider the other numerous draft bills submitted to improve the protection of women's rights;

### **III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Government of Israel must:

- End the occupation and until then ensure the rights and protection of Palestinian civilians;
- Observe international human rights and humanitarian law in undertaking security measures; compensate the Palestinian people for damages, including for loss of property; ease the humanitarian and economic plight of the Palestinian people, including increasing the freedom of movement for people and goods both within and from the West Bank and Gaza and by abandoning practices that fragment families;
- Cease the use of administrative detention and allow detainees access to lawyers and doctors from the outset of their detention;
- Ban closure and demolition of detainees' homes;
- Observe the right to health, as stipulated in the Universal Declaration of Human Rights, particularly by ensuring that the wounded and the sick, as well as the infirm and expectant mothers have easy and immediate access to medical care and are the object of protection and respect;
- Ensure the security and the freedom of movement of international and national United Nations staff, in accordance with the Convention on the Privileges and Immunities of the United Nations, and specific agreements between UNRWA and Israel, and other humanitarian agencies operating in the OPT to facilitate access for the provision of humanitarian assistance, including for Red Crescent ambulances;
- Include information on compliance with obligations in the OPT in reports submitted to treaty bodies, in particular to the Committee on the Elimination of Discrimination against Women, on protection and promotion of women's rights;
- Acknowledge and collaborate with the Special Rapporteur on the human rights situation in the Occupied Palestinian Territories as well as other special procedures mandates of the Human Rights Commission;

The Palestinian Authority must:

- Work towards the creation of a democratic, secular State, which promotes and protects women's rights;
- Adopt a policy of zero tolerance towards all forms of violence, including terrorism;
- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence;
- Undertake legislative reform in line with international standards, particularly of the Personal Status Codes, to have a common Palestinian family law for both West Bank and Gaza that is based on participatory and democratic relations within the family. Similarly, revise the Penal Code to criminalize domestic violence, honour crimes and sexual assaults on women;

- Adopt the Bill of Rights for Women, and measures to ensure its effective implementation and consider the other numerous draft bills submitted to improve the protection of women's rights;
- Provide the necessary legal, political and financial support to the Ministry of Women's Affairs;
- Work towards a system of positive discrimination as a means of eliminating structural discrimination against women and to increase female representation in the Palestinian Authority, Palestinian Legislative Council and local government bodies, municipalities and village councils, including the introduction of a quota system as demanded by the women's organizations for local and national elections;
- Undertake measures to achieve equality between women and men and end violence against women, including by awareness-raising campaigns, curriculum change, training in gender sensitivity to all relevant actors and mental health and trauma counselling as well as shelters for women who are victims of violence or those who are at risk of violence;

#### **IV. Administration of justice and the rule of law**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Government of Israel must:

- Observe international human rights and humanitarian law in undertaking security measures; compensate the Palestinian people for damages, including for loss of property;
- Cease the use of administrative detention and allow detainees access to lawyers and doctors from the outset of their detention;

#### **V. Fundamental freedoms**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Government of Israel must:

- End the occupation and until then ensure the rights and protection of Palestinian civilians;
- Observe international human rights and humanitarian law in undertaking security measures; compensate the Palestinian people for damages, including for loss of property; ease the humanitarian and economic plight of the Palestinian people, including increasing the freedom of movement for people and goods both within and from the West Bank and Gaza and by abandoning practices that fragment families;
- Cease the use of administrative detention and allow detainees access to lawyers and doctors from the outset of their detention;
- Ban closure and demolition of detainees' homes;
- Observe the right to health, as stipulated in the Universal Declaration of Human Rights, particularly by ensuring that the wounded and the sick, as well as the infirm and expectant mothers have easy and immediate access to medical care and are the object of protection and respect;
- Ensure the security and the freedom of movement of international and national United Nations staff, in accordance with the Convention on the Privileges and Immunities of the United Nations, and specific agreements between UNRWA and Israel, and other humanitarian agencies operating in the OPT to facilitate access for the provision of humanitarian assistance, including for Red Crescent ambulances;



The Palestinian Authority must:

- Work towards the creation of a democratic, secular State, which promotes and protects women's rights;
- Work towards a system of positive discrimination as a means of eliminating structural discrimination against women and to increase female representation in the Palestinian Authority, Palestinian Legislative Council and local government bodies, municipalities and village councils, including the introduction of a quota system as demanded by the women's organizations for local and national elections;

## **VI. Economic and social rights**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Government of Israel must:

- End the occupation and until then ensure the rights and protection of Palestinian civilians;
- Observe international human rights and humanitarian law in undertaking security measures; compensate the Palestinian people for damages, including for loss of property; ease the humanitarian and economic plight of the Palestinian people, including increasing the freedom of movement for people and goods both within and from the West Bank and Gaza and by abandoning practices that fragment families;
- Cease the use of administrative detention and allow detainees' access to lawyers and doctors from the outset of their detention;
- Ban closure and demolition of detainees' homes;
- Observe the right to health, as stipulated in the Universal Declaration of Human Rights, particularly by ensuring that the wounded and the sick, as well as the infirm and expectant mothers have easy and immediate access to medical care and are the object of protection and respect;
- Ensure the security and the freedom of movement of international and national United Nations staff, in accordance with the Convention on the Privileges and Immunities of the United Nations, and specific agreements between UNRWA and Israel, and other humanitarian agencies operating in the OPT to facilitate access for the provision of humanitarian assistance, including for Red Crescent ambulances;

## **VII. Cultural rights**

n/a

## **VIII. Situation of specific groups**

Special Rapporteur on violence against women (E/CN.4/2005/72/Add.4, para. 78)

The Palestinian Authority must:

- Work towards the creation of a democratic, secular State, which promotes and protects women's rights;
- Adopt a policy of zero tolerance towards all forms of violence, including terrorism;
- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence;

- Undertake legislative reform in line with international standards, particularly of the Personal Status Codes, to have a common Palestinian family law for both West Bank and Gaza that is based on participatory and democratic relations within the family. Similarly, revise the Penal Code to criminalize domestic violence, honour crimes and sexual assaults on women;
- Adopt the Bill of Rights for Women, and measures to ensure its effective implementation and consider the other numerous draft bills submitted to improve the protection of women's rights;
- Provide the necessary legal, political and financial support to the Ministry of Women's Affairs;
- Work towards a system of positive discrimination as a means of eliminating structural discrimination against women and to increase female representation in the Palestinian Authority, Palestinian Legislative Council and local government bodies, municipalities and village councils, including the introduction of a quota system as demanded by the women's organizations for local and national elections;
- Undertake measures to achieve equality between women and men and end violence against women, including by awareness-raising campaigns, curriculum change, training in gender sensitivity to all relevant actors and mental health and trauma counseling as well as shelters for women who are victims of violence or those who are at risk of violence;

The Government of Israel must:

- End the occupation and until then ensure the rights and protection of Palestinian civilians;
- Observe the right to health, as stipulated in the Universal Declaration of Human Rights, particularly by ensuring that the wounded and the sick, as well as the infirm and expectant mothers have easy and immediate access to medical care and are the object of protection and respect;

#### **IX. The right to development and international cooperation**

n/a

#### **X. Comments from the Government** <sup>49</sup>

n/a

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<sup>49</sup> As published as official documents of the CHR.