

parties and NGOs to function freely and reforming legislation in that area; called on the government to implement the recommendations in the SR's report and end all violations, in particular detention and imprisonment and harassment of and threats against human rights defenders and others; called on the government to grant access to the prisons by humanitarian NGOs and international humanitarian agencies; called on the government to release the numerous persons detained for activities of a political nature and reintegrate them into civil society, permitting them to carry out their peaceful activities; called on the government to ensure workers' rights, including through independent and generalized collective bargaining; extended the mandate of the SR for a further year; and invited the government to consider requesting the establishment of a programme of technical cooperation.

The resolution was defeated by a vote of 16 in favour, 19 opposed, 18 abstentions. With the resolution defeated, the mandate of the SR was discontinued.

THEMATIC REPORTS

Mechanisms of the Commission on Human Rights

Arbitrary detention, Working Group on: (E/CN.4/1998/44, paras. 4, 7, 19)

The report notes that communications were sent to the government and a response was received in one case. No details were provided.

Extrajudicial, summary or arbitrary execution, Special Rapporteur on: (E/CN.4/1998/68, paras. 14, 17, 39; E/CN.4/1998/68/Add.1, paras. 133–135)

The Special Rapporteur (SR) transmitted information to the government related to the deaths of four people in February 1996 who were flying in two civilian light aircraft and were shot down by two Cuban air force planes. The report notes that the light aircraft, belonging to the organization Hermanos al Rescate, were flying in international airspace at the time of the shoot-down.

The government responded that the cases did not fall within the SR's sphere of competence and were outside the mandate given by the Commission on Human Rights. The government stated that the shooting down of the two small pirate aircraft bearing U.S. registration marks within Cuban airspace was an act of legitimate defence, and did not constitute extrajudicial, summary or arbitrary execution. The SR noted that all complaints are analysed in a spirit of impartiality and that they are transmitted in accordance with the working methods which have been approved by the Commission on Human Rights. The SR expressed the view that the complaints transmitted concerning the incident were grave enough for the government to reply to the SR's concerns.

Independence of judges and lawyers, Special Rapporteur on the: (E/CN.4/1998/39, paras. 19, 58–64)

The report notes that the government responded to communications sent in July 1996 concerning legislation on the independence of judges and lawyers, and cases involving two lawyers. The government provided information on the reforms of the judiciary since the ending of the previous regime, particularly the law that abolished the Emergency Tribunals and the Criminal Division of the High Court, and explained that the principle of the independence of the judiciary is enshrined in the Constitution and in the 1990 Law on the *Tribunales Populares*. Decree Law 81 of 1984 provides, *inter alia*, that "the exercise of the legal profession is free" and that lawyers are independent and accountable only to the law. Article 5 of Decree Law 81 defines the *Organización Nacional de Bufetes Colectivos* (National Organization of Collective Law Offices) as a public interest professional legal entity, autonomous and national, whose membership is voluntary and which is regulated by the law and its own agreements and provisions. Information was also provided on the Criminal Procedure Law and provisions relating to the functions of lawyers, including members of the *Organización Nacional de Bufetes Colectivos*. In addition, the government stated that the freedom of association and of speech of lawyers is recognized in articles 53 and 54 of the Constitution and, for the members of the *Organización Nacional de Bufetes Colectivos*, in article 34 of its Regulations. Moreover, Decree Law 81 states that lawyers may organize and conduct legal literacy programmes for the public.

With regard to the cases of the two lawyers, the government stated that one of them had been expelled by the *Organización Nacional de Bufetes Colectivos* because of repeated and serious failures to carry out his professional duties, thereby harming both his clients and the prestige of the organization. On appeal, the Minister of Justice upheld the expulsion. With regard to the second lawyer, the government stated that his request to create a lawyers' association was rejected because it would have had similar objectives to those of the existing *Unión Nacional de Juristas de Cuba*, which would be contrary to Cuban law.

The Special Rapporteur (SR) noted, on the basis of the information provided by the government, that it does appear that the government, through the Minister of Justice, has some control over disciplinary sanctions on lawyers. The SR recalled Principle 28 of the UN Basic Principles on the Role of Lawyers which stipulates that "Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review." With regard to the first case, the SR stated that the appeal to the Minister of Justice and dismissal of it by the Minister indicated that there may not be a provision in the legislation for an independent judicial review as provided in Principle 28.