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FOR THE RECORD 1998:

*The  
United Nations  
Human Rights  
System*



**Volume 6:**

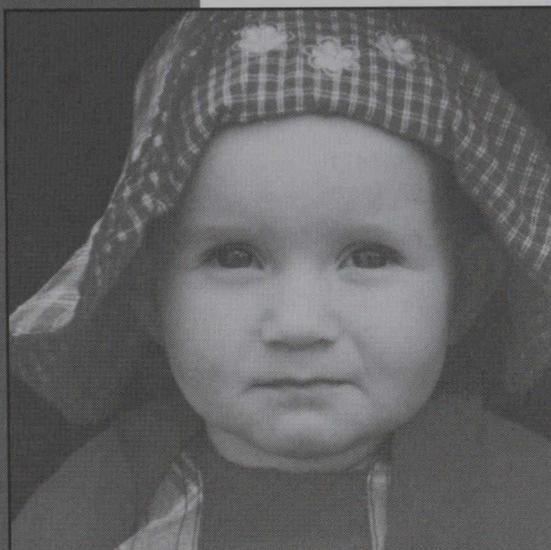
**WESTERN EUROPE  
& OTHER**



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**Volume 6:**

**WESTERN EUROPE  
& OTHER**

# HUMAN RIGHTS INTERNET (HRI)

Founded in 1976, Human Rights Internet (HRI) is a world leader in the exchange of information within the worldwide human rights community. An international non-governmental organization (NGO) based in Ottawa, Canada, HRI has consultative status with the Economic and Social Council (ECOSOC) of the United Nations and with UNICEF and observer status with the African Commission on Human and Peoples' Rights.

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# GLOSSARY OF ACRONYMS

<b>CAT</b>	Committee Against Torture
<b>CCPR</b>	Committee on Civil and Political Rights, also known as the Human Rights Committee (HRC)
<b>CEDAW</b>	Committee on the Elimination of Discrimination Against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CHR</b>	Commission on Human Rights
<b>CRC</b>	Committee on the Rights of the Child
<b>DAW</b>	Division for the Advancement of Women
<b>CSW</b>	Commission on the Status of Women
<b>ECOSOC</b>	Economic and Social Council
<b>GA</b>	General Assembly
<b>HRC</b>	Human Rights Committee, also known as the Committee on Civil and Political Rights (CCPR)
<b>ICC</b>	International Criminal Court
<b>ICJ</b>	International Court of Justice
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>SC</b>	Security Council
<b>S-G</b>	Secretary-General
<b>SR</b>	Special Rapporteur
<b>SRep</b>	Special Representative
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNHCHR</b>	United Nations High Commissioner for Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WG</b>	Working Group

## ANDORRA

**Date of admission to UN:** 28 July 1993.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Andorra has not submitted a core document for use by the treaty bodies.

#### Discrimination against Women

Acceded: 15 January 1997.

Andorra's initial report was due 14 February 1998.

#### Rights of the Child

Signed: 2 October 1995; ratified: 2 January 1996.

Andorra's initial report was due 31 January 1998.

*Reservations and Declarations:* Paragraphs 2 and 3 of article 38; articles 7 and 8.



## AUSTRALIA

**Date of admission to UN:** 1 November 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Australia has submitted a core document (HRI/CORE/1/Add.44) for use by the treaty bodies. The report prepared by the government includes demographic and statistical data as well as information on the federal system, the general legal framework for the protection of human rights, including State and Territory anti-discrimination and equal opportunity legislation, and the Human Rights and Equal Opportunity Commission.

The Human Rights and Equal Opportunity Commission is a permanent independent statutory authority with responsibility for provisions in the Human Rights and Equal Opportunity Act 1986, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Disability Discrimination Act 1992. The Commission also assists the Privacy Commissioner in administering the Privacy Act 1988. Additional institutional bodies include a Commonwealth Ombudsman with the mandate to investigate complaints about administrative actions of all Commonwealth government departments and some agencies, the office of Aboriginal and Torres Strait Island Social Justice Commissioner, the Office of the Status of Women and the Office of Multicultural Affairs. Federal human rights legislation operates throughout Australia and there are some areas of overlap with state and territory legislation. International human rights treaties are not self-executing and require legislative implementation to be effective in Australian law. An individual cannot complain in a domestic court about a breach of Aus-

tralia's international human rights obligations unless the right has been incorporated into domestic law.

#### Economic, Social and Cultural Rights

Signed: 18 December 1972; ratified: 10 December 1975.

Australia's third periodic report (E/1994/104/Add.22) has been submitted and is pending for consideration at the Committee's November 2000 session; the fourth periodic report is due 30 June 1999.

#### Civil and Political Rights

Signed: 18 December 1972; ratified: 13 August 1980.

Australia's third and fourth periodic reports were due 12 November 1991 and 1996 respectively.

*Reservations and Declarations:* Paragraphs 2 (a), (b) and 3 of article 10; paragraph 6 of article 14; article 20; declaration under article 41.

**Optional Protocol:** Acceded: 25 September 1991.

**Second Optional Protocol:** Acceded: 2 October 1990.

#### Racial Discrimination

Signed: 13 October 1966; ratified: 30 September 1975.

Australia's 10th, 11th and 12th periodic reports were due 30 October 1994, 1996 and 1998 respectively.

*Reservations and Declarations:* Paragraph (a) of article 4; declaration under article 14.

#### Discrimination against Women

Signed: 17 July 1980; ratified: 28 July 1983.

Australia's fourth periodic report (CEDAW/C/AUT/3-4) has been submitted but is not yet scheduled for consideration by the Committee; the fifth periodic report is due 27 August 2000

*Reservations and Declarations:* Paragraph 2 of article 11.

#### Torture

Signed: 10 December 1985; ratified: 8 August 1989.

Australia's second and third periodic reports were due 6 September 1994 and 1998 respectively.

#### Rights of the Child

Signed: 22 August 1990; ratified: 17 December 1990.

Australia's second periodic report was due 15 January 1998.

*Reservations and Declarations:* Paragraph (c) of article 37.

### REPORTS TO TREATY BODIES

#### Committee on the Elimination of Racial Discrimination

At its August 1998 session the Committee adopted Decision 1 (53) on Australia (CERD/C/53/Misc.17/Rev.2). Under article 9 (1) of the Convention, the Committee requested that the government provide it with information on: the changes projected or introduced to the 1993 Native Title Act; any changes of policy as to Aboriginal land rights; and the functions of the Aboriginal and

Torres Strait Social Justice Commissioner. The government was requested to submit the information by 15 January 1999 so that the Committee can consider it at its 54th session, 1 to 19 March 1999.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, paras. 15, 53, 72, 128—2; 131)

The report refers to allegations transmitted to the government concerning a rise in racism and xenophobia, particularly towards Aborigines and Australians of Asian origin. The report notes that the government responded to the Special Rapporteur's (SR) request for an invitation to visit and that the mission will take place in 1998. The government also provided the SR with information on an initiative that was announced by the Prime Minister in May 1997 aimed at a reconciliation process with three basic objectives: a shared commitment to raise the living standards and broaden the opportunities available to the most disadvantaged group in society, indigenous Australians, as part of a broader commitment to providing equality of opportunity to all; a realistic acknowledgment of the interrelated histories of the various elements of society; and mutual acceptance of the importance of working together to respect and appreciate differences and ensure that they do not prevent Australians from sharing in the future. The SR welcomed the political commitment of the government and encouraged the authorities to translate it into concrete and effective action by adopting appropriate legislative or other measures, particularly favouring Aborigines.

**Religious intolerance, Special Rapporteur on:** (E/CN.4/1998/6, para. 23; E/CN.4/1998/6/Add.1)

The Special Rapporteur (SR) visited Australia from 17 February to 1 March 1997. The report of the visit contains information on the Constitution, federal, state and territory laws, the situation of religions and beliefs and the situation of religious minorities and aboriginal peoples. In addition to meetings with government representatives, the SR held consultations with human rights NGOs and representatives of the Aboriginal, Baha'i, Christian, Hindu, Jewish and Muslim communities as well as the Church of Scientology and The Family.

The review of legal provisions noted that there is no general bill of rights and freedoms in the Australian Constitution. Religious freedom is guaranteed, however, by article 116 to the extent that this article prohibits the state (the Commonwealth) from establishing any religion, imposing any religious observance, prohibiting the free exercise of any religion, or requiring a religious test as a qualification for any office or public trust under the Commonwealth. While these provisions preserve the principle of state neutrality with regard to religion and religious freedom, the SR pointed out that: they apply only

to the legislative powers of the Commonwealth and not other powers, such as executive and judicial powers, and activities; and constitutional protection of religious freedom applies only to the Commonwealth and not to the States and Territories, which, by law, have freedom of action with regard to religious freedom, including its restrictions.

The commentary on federal laws included a summary of points related to the Human Rights and Equal Opportunity Commission (HREOC), which was established by law in 1996. The Commission's mandate, based on human rights definitions contained in the International Covenant on Civil and Political Rights (ICCPR) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, is to: promote understanding, acceptance and public discussion of human rights and equal opportunity in employment; investigate Commonwealth acts and practices which are not consistent with human rights and constitute discrimination; advise Parliament on legislation, and the Commonwealth on activities related to human rights, equality of opportunity and employment; and suggest action to be taken by Australia in accordance with the international instruments to which it is a party.

The report stated that, within this mandate, the HREOC is authorized to assert its jurisdiction in a number of areas, including the settlement of disputes and the education of citizens whenever manifestations of intolerance and of discrimination based on religion or belief are brought to its attention. The act establishing the Commission however, does not guarantee rights, does not prohibit discrimination, and does not provide enforceable remedies.

The Racial Discrimination Act (1975) was also cited as providing protection, albeit limited, against religious discrimination. The protection exists under this law to the extent that the provisions prohibit such discrimination if a religious group can also be classified as an "ethnic" group. The SR stated that even in cases where a religious group may not be classified in that way, it can be argued that the Act covers discrimination on the basis of religion in certain circumstances, as indirect race discrimination, and noted, as an example, the denial of a job to an Australian Muslim woman who wears a head scarf.

The section of the report dealing with state and territorial law noted that Tasmania is the only state in which the Constitution contains a provision on religious freedom. Anti-discrimination laws in Victoria, Queensland and Western Australia and the self-governing Territories make it unlawful to discriminate against anyone on the basis, or in the absence, of lawful religious beliefs and practices. These texts do not, however, guarantee freedom of religion; rather, they prohibit discrimination except in certain cases such as employment in denominational schools.

The section addressing the situation of religions and beliefs includes statistics on the distribution of the major religions in Australia: Catholic, Anglican, Uniting (sic),

Methodist, Presbyterian, Orthodox, Baptist, Lutheran, Pentecostal, Churches of Christ, Jehovah's Witnesses, the Salvation Army, Seventh Day Adventist, Mormons, Brethren, Oriental Christian, Congregational, Muslim, Buddhist, Jewish and Hindu. With regard to indigenous peoples, the report notes that while some may be included among adherents of Christian faiths, these peoples also have their own beliefs which are manifested by their sacred ties to the Earth and which have to be taken into account as part of Australia's religious diversity.

The report provides separate commentary on the Muslim and Jewish religious minorities and combined narrative on the Buddhist and Hindu minorities because the information received on them was similar. The situation of smaller communities, such as the Church of Scientology and The Family, is also considered.

With regard to the situation of Muslims, the report refers to statements by Muslim religious and civilian representatives asserting: Muslims are free to carry out their religious activities, including religious services and traditions, as well as the management of business relating to their religious institutions; imams are allowed freedom of expression, particularly for sermons given in mosques; the call to prayer is allowed, but without microphones except at the end of Ramadan; requests for official recognition of religious days was generally granted so that believers — adults in the workplace and young people in school — did not have to work on those days if they so chose; concerning religious education, the Muslim community has 23 religious schools (Madrassa) for 8,000 students, the curriculum must conform with Department of Education criteria and includes subjects such as Islam and the Arabic language; state subsidies may be granted to these private schools; and the Muslim community has 107 mosques and places of worship in Australia. The report notes cases in which non-Muslim residents oppose or have opposed the construction of mosques in their neighbourhoods generally involved fears that there would be noise and traffic as believers arrived and left but these types of cases occur only sporadically and are resolved through dialogue. The report concluded by noting that the Australian Muslim community is characterized by experience based on sound community structures, including cultural centres, places of worship, schools, and a network of associations enabling Muslims not only to preserve their cultural and religious identity, but also to integrate into Australian society.

The harmony achieved between Muslims and others in society may sometimes be disturbed, however, as a result of the impact of international events (the Gulf war, for example) and national events (political statements against "foreigners" by an MP, for example). However, these appear to be more incidents of racism based mostly on ignorance and not manifestations of religious intolerance. The incidents relating to the Gulf war and cases of verbal aggression against Muslim women wearing the head scarf are viewed as indicative of the ignorance of persons who associate Saddam Hussein with Islam and, in general, terrorism with Arabs and Muslims. The report

notes that much of this confusion is created by Australian and foreign media. The SR stated that these incidents were handled in a positive way through dialogue between the various denominations which led, for example, to the dissemination of a joint statement by religious communities, as well as by political and security authorities calling for tolerance.

The section considering the situation of the Jewish community notes, *inter alia*, that: there are no obstacles for Jews carrying out their religious activities freely, particularly in the areas of religious services, traditions and the management of the business of religious institutions; the Jewish community has about 20 schools which can be partly funded by public subsidies; there are about 70 synagogues and no problems encountered with regard to the construction of places of worship; many incidents of vandalism against synagogues and Jewish cemeteries have been reported and are manifestations of anti-Semitism, apparently committed by small groups; the Jewish community is fully integrated into Australian society, and its public participation in the building of the country, particularly by top political leaders, is recognized; and the community had made some requests related to the elimination of Christian insignia in public life, including prayers during the opening of Parliament, the official election day on Saturday, which is the Sabbath, and the cross on the national flag.

The commentary on the situation of Buddhists and Hindus notes, *inter alia*, that: Buddhists and Hindus may freely carry out their religious activities, including religious services and traditions and the management of the business of their religious institutions; and the authorities have allowed foreign religious leaders to come to Australia to meet the spiritual needs of the Buddhist and Hindu communities and to encourage them to integrate more fully into Australian society. The report notes that: leaders of both communities play an important role in establishing an inter-faith dialogue with the Christian, Muslim and Jewish communities; referring to official recognition of religious days, the authorities indicated that negotiations with companies were possible and that there was an ongoing process of negotiation; obstacles to religious education had occasionally arisen, related to applications for building permits for private training schools — with residents in the area of a future building site opposed to such projects out of fear of "an Asian invasion" which would upset local cultural and social characteristics and lower property values, and lack of conformity between the applications for permits and relevant legislation; the government had undertaken a programme of public education campaigns designed to combat racism resulting from ignorance, not religious intolerance; and the situation of the Buddhist and Hindu minorities in religious and non-religious matters seems to be satisfactory, despite a few isolated incidents attributable not to religious intolerance, but rather to ignorance fuelling manifestations of racism that are encouraged by some isolated extremist political statements.

In terms of the Church of Scientology, the report summarized a 1983 High Court decision as a result of which the Church of Scientology is recognized as a religious institution. In that case, the High Court had to decide whether the Church met the description of a "religious, public and voluntary institution" in order to be exempted from taxes on wages paid to staff under the income tax law. The High Court found in favour of the Church and indicated that the status of a "religion" did not apply only to theistic denominations. The High Court specified that there were two criteria for determining the existence of a religion: belief in a supernatural being, thing, or principle and submission to rules of conduct shaping such a belief. The Court also proposed that any organization which purported to be religious and whose belief and practices were reminiscent of, or reflected, ancient forms of worship could claim to believe in one or more supernatural beings, a god or an abstract entity and would be regarded as a religion.

The report also notes, however, that in discussions with the SR several religious and non-governmental commentators expressed the view that Scientology was really a sect based on a combination of elements borrowed from psychology and religion and, on a search for profit at the expense of its members, achieved its objectives through brainwashing chiefly young people. Scientology awoke not only suspicions, but also fears owing to its aggressiveness and virulence, especially in its legal proceedings against any opponent.

Notwithstanding the concerns and fears expressed by some, representatives of the Church of Scientology indicated that they enjoyed total religious freedom, including places of worship, and enjoyed good relations with the authorities. Scientologists also stated that their church maintained cordial relations with the representatives of major religions. The report commented, however, that Scientology appears to be closer to minority groups such as the Jehovah's Witnesses, the Unification Church, The Family, and the Mormons, and is reported to assist these groups and faiths with advice, moral support, and public relations.

With regard to The Family — derived from the "Children of God" movement and based on the teaching of the Bible, the education of children at home and community life (about 400 persons) — the report recalled that in May 1992, the six Family communities in Sydney and Melbourne were raided by police and members of the medico-social services. House searches were carried out and children were taken from their families for questioning and medical examinations. The children were returned to their parents several days later for lack of evidence supporting charges of sexual abuse against minors or the description of the movement by some media as a "dangerous sect". The report notes that the judicial proceedings which had been initiated, owing in part to differing interpretations of the legal status of teaching in the home as practised by The Family, were suspended following an amicable agreement that included a programme of social activities for the children. The case was

ultimately dismissed in November 1993 by the Children's Court in New South Wales. Representatives of The Family indicated to the SR that they had been seeking damages from agencies, have appealed for rehabilitation by the withdrawal of all allegations against them, and expressed fears of discrimination on the part of the authorities.

On the situation of indigenous peoples (Aboriginals) the report refers to a number of points including that land and sacred sites hold a fundamental significance for indigenous peoples in that their beliefs are identified with the land. Maintaining the integrity of the land therefore takes on a religious dimension which has to be preserved. Following on this, the report notes the 1992 Mabo (No. 2) case in which the High Court held that the common law recognizes some form of native title in accordance with the laws and customs of the Aboriginals and found that Aboriginal peoples may have maintained continued links with that land under traditional law. The SR recalled that in response to the Mabo decision, the government enacted the Native Title Act 1993 which defines native title as "the communal, group or individual rights and interests of the Aboriginal peoples or Torres Strait Islanders in relation to land or water" where: the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; these peoples, by those laws or customs, have a connection with the land or waters; and the rights or interests are recognized by the common law of Australia.

The report then notes: the main features of the Native Title Act are that it recognizes and protects the existence of native title rights and interests in the common law of Australia, validates past Commonwealth acts in relation to land which might otherwise have been invalid as a result of the High Court's decision, provides processes for determining where native title still exists, for future dealings in native title land, and for compensation for extinguishment of native title, and enables compatible state and territory laws to be recognized. Native title is also protected by the Racial Discrimination Act to the extent that, with regard to extinguishment of native title, the government must follow the procedures for extinguishing other interests in land because to extinguish native title alone would be racially discriminatory. The report notes that despite steps to recognize and protect the rights of Aboriginal and Torres Strait Islander peoples to their land and sacred sites, an argument has been made that many Aboriginal and Torres Strait Islander peoples are unable to benefit from improvements because they were dispossessed of their land in the past, their ties to it have been broken, and their traditional land-lore has been lost; an argument has been made that the Mabo decision and the Native Title Act do not provide sufficient protection for Aboriginal and Torres Strait Islander peoples to own and control their culture and heritage; and some Aboriginal groups, such as the New South Wales Land Council, have called for further legislation to transfer the regulation of Aboriginal culture and heritage to Aboriginal control, particularly with respect

to sacred and significant sites and the return of human remains.

The report refers to concerns expressed over proposed amendments to the Native Title Act (NTA) which would possibly breach the principles of the Racial Discrimination Act (RDA) by expanding pastoral leases and eroding the right to negotiate as set out in provisions of the RDA. The report addresses points made by critics of the amendments, including that: the pastoral lease amendments allow governments to expand pastoral lease interests and uses, while denying affected title holders the procedural protections which would apply to ordinary title holders in the same circumstances; the amendments are unnecessary to protect the existing interests of pastoralists; the government has proposed removing the right to negotiate from exploration and prospecting titles, allowing ministerial intervention prior to determining claims; the right to negotiate will be a "once only" process and the time for negotiation and arbitration will be reduced; the government mistakenly regards the right to negotiate as being a special "gift" to indigenous peoples, which it can take away as it pleases; the right to negotiate is a recognition of actual native title rights, and its preservation is essential if native title is to be accorded true equality of protection; and, erosion of the right to negotiate would remove the balance of the NTA, which protects the titles of all other Australians.

Balancing these criticisms, the report notes various kinds of protection given to the land and to sacred sites, including sacred objects, and therefore to their religious dimension. These protections take the form either of regional agreements and legislation ensuring the protection and management of Aboriginal lands, or Commonwealth and State and Territory laws on property and the cultural heritage. The SR stated that these forms of protection are the expression of an official policy in favour of Aboriginals, based on well-developed legislation, but that a number of difficulties remain. The problems arise in part from the complexity of the relations between federal laws, which are few and protective, and state and territory laws, which are many, uneven in the degree of protection they afford and sometimes inadequate in relation to Commonwealth standards. Problems have also been encountered as a result of the inability of these laws, derived from a Western legal system, to take account of Aboriginal values, such as the requirement in some cases that Aboriginals have to prove the religious significance of sites and their importance. On this latter point, the report notes that such proof may be difficult because of different approaches by different Aboriginal groups, the fact that knowledge of the sites is restricted to a few gender-specific individuals, and partly because it conflicts with some Aboriginal values and customs including the importance given to secrecy.

Brief commentary is also included in the report on the issues of Aboriginal cultural property and the return of objects of religious significance, including sacred objects, non-sacred but valuable objects, and human remains.

In terms of the general conditions affecting indigenous peoples, the report states that despite the official policy of conciliation towards Aboriginals, the latter still appear to occupy a marginal place in economic and social areas — including in employment — as shown by the frequent occurrences of alcoholism, domestic violence and unemployment in those communities.

The report concludes with a number of observations and several recommendations. The observations note, *inter alia*: the generally satisfactory situation in Australia with regard to tolerance and non-discrimination based on religion; the country's attachment to democracy and its sound democratic institutions; the government's multicultural policy fostering a culture of tolerance and aimed at the integration rather than the assimilation of all components of society; an approach to secularity that does not favour the rejection of religions and new religious movements (or sects), but rather equality for all under the prevailing law; the role of established, politically driven institutions, which try to respond to the needs of society, including those of its minorities, and provide ways of alleviating all tensions, for example the judicial system and national institutions such as the HREOC and the Ethnic Affairs Commission; the harmonization of specific interests and the general interest and especially the non-interference between citizenship and minority identities; incidents of racism, mostly expressed by one sector of the population, that can affect whole communities — Asian, Muslim and Jewish; the fact that the intolerance which is manifested is not religious but racial, founded on ignorance and encouraged by extremist political speeches; and the fact that such manifestations of racism towards minorities as well as Aboriginals are a minor phenomenon which is rejected by a majority of the population.

The report recommends that:

- ♦ the government develop a national education policy, coordinated at the federal, state and territory levels to promote tolerance and non-discrimination;
- ♦ an educational campaign be conducted for the benefit of the media, which often present caricatures or biased images that are harmful to minorities and to religion;
- ♦ encouragement be given to the establishment of awards for journalists who have written articles on minorities in line with the principles of tolerance and non-discrimination;
- ♦ in television programming, characters be introduced representing different beliefs as part of a message of tolerance, respect and mutual enrichment;
- ♦ the official policy of reconciliation, related to Aboriginals, be pursued and further strengthened in the area of religion, and that recognition of Aboriginal beliefs as religious beliefs be reaffirmed and reflected in demographic and statistical data;

- ♦ with regard to native title, uniformity be ensured in legislation at the federal and state levels related to protection of land and sacred sites as well as the return of religious objects and the preservation of cultural heritage; and that legislation fully guarantee that Aboriginals participate and share in decision-making on an equal footing with the authorities concerned;
- ♦ encouragement be given to other states, in which museums hold objects belonging to the Aboriginals' cultural and religious heritage, to cooperate by removing any political, legislative or other obstacle to the return of the objects as quickly as possible; and
- ♦ the private sector, particularly employers, apply the principle of positive discrimination in the same way as the government to ensure that Aboriginals are no longer an excluded community and enjoy rights, particularly economic, social, and cultural rights.

#### **Sale of children, child prostitution, child pornography, Special Rapporteur on the:**

(E/CN.4/1998/101, paras. 9, 74, 98, 134)

The report refers to several cases related to suicide and attempted suicide by men who were investigated by child protection authorities in relation to allegations of child abuse. Information indicated that computer records allegedly containing child pornography had been seized in raids and a juvenile had been taken from the care of one of the men under investigation. Commentary on the media and the rights of the defendant refers to the fact that there had been criticism of the intense media coverage of the recent widespread investigations into paedophilia in Australia and that the rights to fair trial and presumption of innocence must be respected.

In the section addressing the child as viewer of sexually explicit material on the Internet and the question of self-regulation by the industry, the report notes that the Australian Broadcasting Authority (ABA), a statutory body, has produced a report supporting a code of conduct established by private industry, subject to registration with a public authority. The ABA has recommended that industry codes of practice be developed by on-line service providers and that infringement of the code should lead to a public hearing. The ABA also expressed the view that it should have a monitoring role in relation to codes of practice for service providers.

On the issue of education as a catalyst in such areas as child labour, child prostitution and HIV/AIDS, the report notes that a first school-based Child Sexual Abuse Prevention Program has been implemented, covering such topics as the human body, early warning signs and trust, "OK" and "not OK touching" and self-esteem.

#### **Toxic wastes and products, Special Rapporteur**

**on:** (E/CN.4/1998/10, paras. 12, 21, 54, 62 E/CN.4/1998/10/Add.1, paras. 2, section "Comments received from States")

The main report refers to information provided by the government related to amendments to the Hazardous

Waste Act which came into force in December 1996. Under the amended Act, there are substantially increased penalties for illegal trade in hazardous waste with maximum fines increased to A\$1 million and providing for executive officers being held personally liable for contraventions of the Act by their companies. The report notes that, among the countries of the Organization for Economic Cooperation and Development (OECD), Australia is one of the largest waste exporters, including under recycling programmes.

The addendum to the main report provides the government's response to information in the Special Rapporteur's (SR) 1997 report on several cases. In the first, related to the operation of a copper mine in Bougainville, the government stated that the subject went well beyond the SR's mandate and the allegation related to events which allegedly took place, but were too dated to be a relevant factor for consideration by the Commission. In the second, regarding the export of various scrap materials to the Philippines, the government denied that the practice of burning off plastic from copper wire was used and noted that there is a current debate as to whether plastic coated cable is generally considered a hazardous waste under the Basel Convention. In the third, related to export of used lead acid batteries to the Philippines, the government noted that the exports had taken place at a time when the Australian government had no jurisdiction over exports of used lead acid batteries. The government noted that a law had been enacted in 1996 to guard against the possibility of illegal traffic in hazardous wastes and, further, stated that since December 1996, all exporters of hazardous waste have been required to obtain a permit from the Federal Minister for the Environment prior to shipping. A permit can only be issued after the consent of the importing country has been obtained and only if the Environment Minister is satisfied that the wastes will be managed in an environmentally sound manner.

#### **Violence against women, Special Rapporteur**

**on:** (E/CN.4/1998/54, section III.B)

The report refers to guidelines governing asylum claims which specify that rape and other forms of sexual assault are acts which inflict severe mental and/or physical pain and suffering and, as such, clearly come within the bounds of torture as defined by the Convention against Torture. The guidelines also establish that sexual violence amounts to a violation of the prohibition against cruel, inhuman or degrading treatment, the security of person and, in some instances, the right to life as set out in a variety of instruments.

With regard to traditional practices as a basis for asylum on the grounds of persecution, the report cites a case in which the Australian Refugee Review Tribunal denied refugee status to a woman who had refused an arranged marriage and had been assaulted and raped by the suitor as a result. The Tribunal concluded that: the rape did not occur for a reason recognized under the Convention on the status of refugees but was a criminal act by an individual; there had not been a systematic failure of state

protection but rather a failure to act based on an insinuation from the applicant's father that she was a liar; and the assault and rape were not interpreted as persecution since state protection had not been systematically denied.



## AUSTRIA

**Date of admission to UN:** 14 December 1955.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Austria has not submitted a core document for use by the treaty bodies.

#### Economic, Social and Cultural Rights

Signed: 10 December 1973; ratified: 10 September 1978. Austria's third periodic report was due 30 June 1997.

#### Civil and Political Rights

Signed: 10 December 1973; ratified: 10 September 1978. Austria's third periodic report (CCPR/C/83/Add.3) was considered at the Committee's October/November 1998 session; the fourth periodic report is due in October 2002.

*Reservations and Declarations:* Paragraph 4 of article 12; articles 9 and 14; paragraph 3 of article 10; articles 19, 21 and 22; article 26; declaration under article 41.

**Optional Protocol:** Signed: 10 December 1973; ratified: 10 December 1987.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 8 April 1991; ratified: 2 March 1993.

#### Racial Discrimination

Signed: 22 July 1969; ratified: 9 May 1972. Austria's 11th, 12th and 13th periodic reports were submitted as one document (CERD/C/319/Add.5) which is pending for consideration at the Committee's March 1999 session; the 14th periodic report is due 8 June 1999. *Reservations and Declarations:* Paragraphs (a), (b) and (c) of article 4.

#### Discrimination against Women

Signed: 17 July 1980; ratified: 31 March 1982. Austria's third and fourth periodic reports were submitted as one document (CEDAW/C/AUT/3-4) which is pending for consideration at the Committee's January 1999 session; the fifth periodic report is due 30 April 1999. *Reservations and Declarations:* Paragraph (b) of article 7; article 11.

#### Torture

Signed: 14 March 1985; ratified: 29 July 1987.

Austria's second and third periodic reports were due 27 August 1992 and 1996 respectively.

*Reservations and Declarations:* Paragraph 1 (c) of article 5; article 15.

#### Rights of the Child

Signed: 26 January 1990; ratified: 6 August 1992.

Austria's initial report (CRC/C/11/Add.14) has been submitted and is pending for consideration at the Committee's January 1999 session; the second periodic report is due 4 September 1999.

*Reservations and Declarations:* Articles 13, 15, 17 and 38.

### REPORTS TO TREATY BODIES

#### Human Rights Committee

Austria's 3rd periodic report (CCPR/C/83/Add.3, April 1997) was considered by the Committee at its October 1998 session. The report prepared by the government contains information on, *inter alia:* the introduction of autonomous administrative tribunals, their role, functions and jurisdiction; the Federal Equal Treatment Act and equality between women and men; the Labour Market Policy Programme for Women; legal provisions prohibiting arbitrary deprivation of liberty; the Employees' Protection Act and safety in the workplace; the use of weapons by police; provisions related to conscientious objection to military service; personal liberty and security of person, the Federal Constitutional Law on the Protection of Personal Liberty and provisions in the Administrative Penal Act; nationality and choice of residence, freedom of movement; legal provisions and regulations related to foreigners and aliens, expulsion; the court systems, administration of justice, due process, the Code of Civil Procedure, the right to remedy; the right to privacy, defamation, libel and slander; freedom of conscience, belief and religion; freedom of opinion and expression, the right to information, case law from the Constitutional and European Courts; freedom of assembly, provisions in the Assembly Act and the Public Safety Act; and the right to vote and be elected.

The Committee's concluding observations and comments (CCPR/C/79/Add.103) welcomed, *inter alia:* ratification of the Second Optional Protocol; constitutional and legislative changes aimed at improved protection against discrimination; admission of women into the armed forces and women's advancement in the Civil Service; legislation to promote the rights and prospects of persons with disabilities; and the end of the state monopoly on radio broadcasting and the establishment of private radio stations.

The principal subjects of concern identified by the Committee included, *inter alia:* lack of provision in the Code of Criminal Procedure related to confessions and proof that they were not extracted by means of torture or ill treatment; failure to authorize the presence of legal counsel at the preliminary stage of judicial criminal investigation; insufficient legal guarantees to prevent deportation in cases where there is a risk of torture or ill

treatment if the persons are returned to their countries of origin; elements related to due process in the functioning of the autonomous administrative tribunals; existing legislation on the minimum age of consent for sexual relations with regard to male homosexuals; restriction of the definition of minorities to certain legally recognized groups; and the possibility that the recognition of religions, and benefits accorded to recognized religions, may result in discrimination.

The Committee recommended that the government, *inter alia*:

- ♦ ensure that all rights protected in the Covenant are given effect in Austrian law;
- ♦ revise the Code of Criminal Procedure to guarantee more fully the right to counsel at all stages of proceedings; implement audio-recording of interrogations;
- ♦ implement fully the principle of independence of all courts and tribunals;
- ♦ revise legislation to remove discrimination on the basis of sexual orientation;
- ♦ provide, in the next report, information on all ethnic, religious or linguistic minorities;
- ♦ provide, in the next report, information on the application and effect of article 283 of the Criminal Code concerning propaganda and incitement to war and to national, racial or religious hatred; and
- ♦ provide, in the next report, information on measures being implemented to counter all forms of violence against women.

The Committee decided that Austria's 4th periodic report would be due in October 2002.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

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

The report notes that an urgent appeal involving nine persons was transmitted to the government. No details of the case or cases were provided.

#### Racism and racial discrimination, Special Rapporteur on: (E/CN.4/1998/79, paras. 53, 72)

The report notes that allegations related to racist incidents were sent to the government and that the government had not replied. No details of the cases were provided.

#### Religious intolerance, Special Rapporteur on: (E/CN.4/1998/6, paras. 48, 61)

Communications were sent to the government and, with regard to conscientious objection, the report notes that in

Austria there is apparently a legal time limit within which conscientious objectors must declare their refusal to perform military service or apply to perform alternative service. Information also indicated that the duration of alternative service is such as to be punitive in nature.

#### Torture, Special Rapporteur on: (E/CN.4/1998/38, para. 22; E/CN.4/1998/38/Add.1, paras. 14-17)

The government provided additional information concerning two cases which were transmitted and to which a reply was first received in 1996. The cases involved a journalist who was reported to have been arrested in September 1994 and knocked unconscious by police officers, and an Egyptian national who was reportedly assaulted by members of the Vienna Drugs Squad in June 1995. In the case of the journalist, the government stated that the Vienna Public Prosecutor's Office had found no grounds for further judicial prosecution of the officers accused and closed the case on 25 September 1997, since the judicial preliminary inquiries had produced no evidence of criminal behaviour. With respect to the Egyptian national, the government stated that the Vienna Court of Appeal, by judgement of 12 November 1996, had dismissed the appeal lodged by the Vienna Public Prosecutor's Office. The judgement of acquittal of the three detectives by the Vienna Regional Criminal Court on 24 April 1996 was therefore said to be final. The report refers to a response received by the Special Rapporteur from the source that had provided the information, indicating that in the case of the journalist, the government had failed to provide further information on the nature of the judicial preliminary inquiries, had not indicated whether the inquiries had been conducted promptly and impartially, or explained how the conclusion had been reached. On the case of the Egyptian national, the source commented that the government's response had not mentioned whether a prompt and impartial investigation had taken place.

#### Toxic wastes and products, Special Rapporteur on: (E/CN.4/1998/10, para. 62)

The report notes that Austria is among the main OECD countries from which, under "recycling" programmes, wastes are exported.

#### Violence against women, Special Rapporteur on: (E/CN.4/1998/54, Section III.B)

The report notes that a number of European courts have interpreted sexual violence and rape as forms of persecution, and refers to an Order by the Austrian Ministry of the Interior, dated 11 August 1995, regarding the granting of asylum for victims of rape. The Order specifies that on the basis of the Geneva Convention and the 1991 Asylum Law, rape is a ground for asylum provided it was motivated by one of the reasons in the Geneva Convention.



## BELGIUM

**Date of admission to UN:** 27 December 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** The core document prepared by the government for use by the treaty bodies (HRI/CORE/1/Add.1/Rev.1) contains statistical data and information on the political structures in Belgium and the general legal framework for the protection of human rights.

The rights guaranteed in the Belgian Constitution essentially mirror those set out in the Universal Declaration of Human Rights and the European Convention on Human Rights. To the extent that article 23 of the Constitution stipulates that every person has a right to a life consistent with human dignity, economic, social and cultural rights are an integral part of the rights regime and include the right to work, equitable working conditions and fair remuneration, the right to information, consultation and collective bargaining, the right to social security and health care, the right to social, medical and legal assistance, decent housing, a healthy environment and the right to cultural and social fulfilment. The courts have jurisdiction over questions related to the applicability of international treaty law when the rights concerned are not explicitly set out in domestic law. A court may only apply provisions of national law if they are compatible or consistent with those of international law.

#### Economic, Social and Cultural Rights

Signed: 10 December 1968; ratified: 21 April 1983. Belgium's second periodic report (E/1990/6/Add.18) has been submitted and is scheduled for consideration at the Committee's April 2000 session; the third report is due 30 June 2000.  
*Reservations and Declarations:* Paragraphs 2 and 3 of article 2.

#### Civil and Political Rights

Signed: 10 December 1968; ratified: 21 April 1983. Belgium's third periodic report (CCPR/C/94/Add.3) was considered at the Committee's October/November 1998 session; the fourth periodic report is due in October 2002.  
*Reservations and Declarations:* Articles 2, 3, and 25; paragraphs 2 (a) and 3 of article 10; paragraphs 1 and 5 of article 14; articles 19, 20, 21 and 22; paragraph 2 of article 23; declaration under article 41.

**Optional Protocol:** Acceded: 17 May 1994.

**Second Optional Protocol:** Signed: 12 July 1990.

#### Racial Discrimination

Signed: 17 August 1967; ratified: 7 August 1975. Belgium's 11th and 12th periodic reports were due 6 September 1996 and 1998 respectively.  
*Reservations and Declarations:* Article 4.

#### Discrimination against Women

Signed: 17 July 1980; ratified: 10 July 1985. Belgium's third and fourth periodic reports were due 9 August 1994 and 1998 respectively.  
*Reservations and Declarations:* Article 7; paragraphs 2 and 3 of article 15.

#### Torture

Signed: 4 February 1985.

#### Rights of the Child

Signed: 26 January 1990; ratified: 16 December 1991. Belgium's second periodic report is due 14 January 1999.  
*Reservations and Declarations:* Articles 13 and 15; paragraph 1 of article 14; paragraph 2 (b) (v) of article 40.

### REPORTS TO TREATY BODIES

#### Human Rights Committee

Belgium's 3rd periodic report (CCPR/C/94/Add.3, August 1996) was considered by the Committee at its October 1998 session. Throughout the report examples from relevant case law and court rulings are cited. The report prepared by the government contains information on, *inter alia*: Constitutional provisions reflecting articles in the Covenant; the Centre for Equal Opportunity and Action to Combat Racism, established in 1993; the Act Promoting Balanced Representation of Men and Women on Lists of Electoral Candidates; remedy and compensation; mechanisms for the advancement of women — e.g., at the federal level, the Council for Equal Opportunity between Men and Women, in the Flemish and French communities and in the Walloon Region; examples of case law relative to equality between women and men; abolition of the death penalty; commencement and termination of life; measures for the removal of aliens, expulsion, repatriation; deprivation of liberty, torture, ill treatment; prison labour; child labour; lawfulness of arrest and detention, the Police Functions Act of August 1992, the Pre-trial Detention Act, provisions in the Code of Criminal Investigation; measures concerning minors who are in conflict with the law; measures for the protection of the mentally ill; release on parole; the prison system; measures related to asylum seekers; legislative measures to improve the administration of justice; the right to privacy and regulations related to personal data or information; freedom of conscience and worship; separation of church and state; the right of public access to the administration; freedom and organization of the audio-visual media, permissible restrictions on freedom of expression; the rights of assembly and association, trade unions, the right to strike; marriage and family, parental rights and duties, divorce; the right to vote and be elected; access to public service; and protection of certain minorities (i.e., linguistic, ideological, philosophical).

The Committee's concluding observations and comments (CCPR/C/79/Add.99) welcomed, *inter alia*: the establishment of the Centre for Equality and Against Racism (Centre pour l'égalité et pour la lutte contre le racisme),

the committee to monitor police services, the Council on Equal Opportunities for Men and Women; the increase in the participation of women in public affairs; ongoing measures to reform the judicial system, in particular those aimed at strengthening the independence of the judiciary; the introduction of new instructions related to methods and techniques under which deportations are carried out; entitlement to education and medical care for children of illegal immigrants; changes in measures related to unaccompanied minors seeking asylum; commencement of procedures aimed at the abolition of the death penalty; establishment of an inter-ministerial committee to examine trafficking in persons, prostitution and pornography; enactment of new laws to combat traffic in minors more effectively; and the steps taken to improve prison conditions.

The principal subjects of concern identified by the Committee included, *inter alia*: reports of widespread police brutality against suspects in custody; lack of transparency in the conduct of investigations by police and difficulty in obtaining access to this information; the behaviour of Belgian soldiers in Somalia during UNOSOM II, noting that investigations are continuing by the government; procedures used in the repatriation of some asylum seekers; the fact that suspects do not always have access to counsel and medical visits from the moment of arrest; the non-application of judicial guarantees in administrative tribunals and other non-judicial entities; the length of pre-trial detention and the high number of detainees who are still awaiting trial; legal provisions authorizing the incarceration of minors for a period of 15 days; and the continuing practice of keeping psychiatric patients in prison psychiatric annexes for several months before transferring them to hospitals for treatment of mental disorders.

Concern was also expressed with regard to, *inter alia*: the procedures for recognizing religions and the rules for public funding of recognized religions; the requirement of prior authorization for foreign channels on cable networks; the lack of information on the *de facto* situation of women; the production, sale and distribution of paedo-pornography and provisions relating to fake marriage and the expulsion of aliens which may give insufficient protection to the right to marry and family life.

The Committee recommended that the government, *inter alia*:

- ♦ provide information on the investigations related to procedures used in forcible repatriation and any criminal or disciplinary proceedings undertaken in cases causing injury or death; provide special training for all security forces involved in effecting deportations;
- ♦ take steps to monitor and supervise community services and parole in a more coherent way; review sentencing policy and training for the judiciary;
- ♦ take steps to ensure that suspects are promptly informed of their rights in a language they understand;

- ♦ develop rehabilitation programmes both for the time during imprisonment and for the period after release; extend judicial guarantees to the pre-trial detention stage;
- ♦ discontinue the practice of keeping psychiatric patients in prison annexes before transfer to appropriate hospitals;
- ♦ abolish the distinction in law between freedom of assembly and the right to demonstrate;
- ♦ provide, in the next report, precise information on the outcome of measures to promote equality and combat violence against women; and
- ♦ take effective measures to curtail the possession and distribution of paedo-pornography.

The Committee decided that Belgium's 4th periodic report would be due October 2002.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Independence of judges of lawyers, Special Rapporteur on the: (E/CN.4/1998/39/Add.3)

The Special Rapporteur (SR) visited Belgium from 14 to 17 October 1997. The mission was largely prompted by concerns arising from the dismissal of a judge and the associated issue of the independence and impartiality of the judges. These concerns had been signalled in the SR's report to the 1997 Commission (E/CN.4/1997/32, para. 79) in which it was noted that an urgent appeal had been sent to the government based on information related to ongoing demonstrations in Belgium following the dismissal of a magistrate investigating a case of child prostitution, kidnapping and murder (the Dutroux case). The 1998 report recalls that, at the time of the dismissal, the SR had stated that while the removal of the magistrate may have been appropriate under Belgian law because his actions called into question his impartiality, it had underscored a perception that the system by which magistrates and judges were appointed, promoted, and dismissed was motivated by political and/or partisan interests. A lack of public confidence in the judicial system, in part because it was seen as corrupt, was also noted as a subject of concern.

The report of the mission includes, *inter alia*, information on reform proposals, international standards, the Parliamentary Commission of Inquiry, judicial accountability, and the removal of Judge Jean-Marc Connerotte, the investigating magistrate, from the Dutroux case.

The report recalls that questions about the functioning of the judicial system arose from an investigation into a paedophile ring and the subsequent discovery of two young girls, as well as the bodies of two others, who had starved to death when Marc Dutroux was in police custody early in 1996. Jean-Marc Connerotte was the investigating magistrate. The report notes a number of facts

that fuelled public outrage, including that: Dutroux had been released in 1992 after serving only three years of a 13-year sentence for the rape of several other young girls; the police had in fact been present at Dutroux's house while the girls were being held there; the police failed to act even though they had been informed in 1993 that Dutroux had been building cells in his home allegedly to hold girls before sending them overseas; on 16 October 1996, the Court of Cassation ruled that the investigating magistrate who had found the two girls alive, Connerotte, should be removed from the case for violating his duty under Belgian law to remain strictly neutral; and, the decision to remove Connerotte was based upon the fact that he had attended a fund-raising dinner for the parents of the victims, thereby calling into question his neutrality. The report notes that under Belgian law the investigating magistrate is entrusted with the task of preparing a file in support of both the defence and the prosecution.

As a result of the Dutroux case, a number of proposals for reform of the judicial system were made, including one related to the procedure by which investigating magistrates and prosecutors are appointed. The report notes that judges have been appointed by the King and the legislature in the belief that such political appointments would lead to a judiciary representative of society. This assertion has been counter-argued, however, on the basis that the process has led to a judiciary dependent upon the political parties and, as a consequence, given rise to a lack of confidence in the ability of the judiciary to apply the rule of law in an independent and impartial manner.

In addition to proposed reforms dealing with the process for the appointment of Justices of the Peace, Judges of the Police Tribunal, and the Tribunals of First Instance, the report refers to efforts made to address issues such as the disciplining of judges and the supervision of the judiciary. The report notes that concerns were expressed to the SR that some of the proposals, if implemented, could undermine the independence of the judiciary. Given that the reform process was still under debate at the time of the mission, the SR considered it premature to reach any final conclusions but the report expressed concern that insufficient attention was being given to international standards for ensuring judicial independence. Referring to the UN Basic Principles on the Independence of the Judiciary, the report notes a number of points, including that the Principles stipulate, *inter alia*: the method of judicial selection shall safeguard against judicial appointments for improper motives; when a charge or complaint is made, the judge shall have the right to a fair hearing and the examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge; and self-discipline should be the norm.

The commentary on the Parliamentary Commission of Inquiry (the Dutroux Commission) notes that: the Commission was set up, in part, to inquire into deficiencies in the justice system and whether there was any political involvement or pressure exerted; several magistrates were invited to appear before the Commission; the hearing was made public and televised; several Magis-

trates complained that the way in which the Commission conducted its inquiry made it appear that they, the Magistrates, were on indictment; several Magistrates felt humiliated; and some Magistrates felt that it was staged to appease public resentment of the judiciary. The SR stated that he had not had the opportunity to study the findings of the Commission but nevertheless expressed reservations on the appropriateness of a parliamentary commission to look into issues related to the judiciary, bearing in mind the doctrine of separation of powers and the need for the proceedings to be made public, particularly through the electronic media.

The section of the report dealing with the removal of Connerotte recalls that the grounds for removal were based on a number of considerations, including that: the impartiality of judges is a fundamental rule of the judiciary and guarantees to persons on trial the impartial application of law by judges; the essential condition for impartiality is total independence vis-à-vis the parties so as to avoid any suspicion of partiality in the investigation of facts, whether for the prosecution or the defence; an examining magistrate who has been entertained by one of the parties at the latter's expense, and who has accepted gifts from or shown sympathy towards that party, may consequently not continue to investigate the case without raising doubts in the minds of others, particularly the defendants, about the magistrate's ability to perform the functions of the office objectively and impartially.

The report states that following discussion during the mission and taking into account all available information, the decision to remove Connerotte was consistent with the highest traditions of the independence and, in particular, impartiality of the judiciary. The SR found no evidence that there were any ulterior motives for this decision and, despite immense public pressure to decide otherwise, the Court had faithfully applied the rule of law and maintained the principles of the profession.

The report underlines several points, including that: the public emotional outburst resulting in the unprecedented street demonstration was understandable under the circumstances; the same public should have been advised of the important principle of an independent justice system, which the Court of Cassation upheld in its decision; the public should have been further advised that the right to an independent and impartial justice system is the right of all consumers of justice and not the right or privilege of the judges and lawyers; the rule of law dictates that there are times when courts have to make unpopular decisions which may not find favour with the public; there will be anarchy if judicial decisions are tailored to meet the demands of street demonstrations; and the allegations against the Court of Cassation amidst public emotion were not justified.

In light of the ongoing nature of the process of reform in Belgium, the SR did not include specific recommendations in the report. The report does conclude however, with the following observations: there is a crisis of public confidence in the administration of justice in Belgium;

the root cause of the deficiencies in the system is the neglect of the judicial system by successive governments; the reform process under way should restore public confidence in the administration of justice but the process must ensure that independence and impartiality are not sacrificed for short-term political gains; the mechanisms for the appointments, promotions, and discipline of magistrates must not only be independent but must be seen to be so; any mechanism to supervise the judiciary should be independent and seen to be so and; to meet this requirement, the composition of these mechanisms should have a majority of magistrates appointed or elected among themselves; and, judicial accountability should not lead to an erosion of judicial independence.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, paras. 53, 54–56)

The report recalls that during 1996 and 1997 the Special Rapporteur (SR) transmitted to the government allegations concerning the expulsion of undocumented aliens from Belgium to Côte d'Ivoire through the intermediary of a private firm, Budd, based in France.

The government replied to the concerns in November 1997 and stated that: the Aliens Section of the Belgian Ministry of the Interior had used Budd's services 350 times between 1994 and October 1996; the Section had not used this firm after that date on the basis that monitoring procedures should be better organized; private airline companies continue, on their own responsibility, to use Budd's services in discharging their responsibilities as carriers in respect of clandestine passengers; the task entrusted to Budd by the Aliens Section did not involve subcontracting deportations since expulsion decisions were taken by the authorities, and specifically by the gendarmerie; the firm's functions were confined to providing administrative assistance in obtaining identity and travel documents or paying the stopover costs of the persons concerned in the Abidjan transit area; the persons concerned were invariably expelled to their country of origin and were not abandoned; persons unable to proceed from Abidjan to the country of which they are nationals are taken back by Belgium; and, pending continuation of their journey they remain in the transit area at Abidjan airport under the supervision of the Côte d'Ivoire authorities and are not entrusted to the Budd firm.

The SR expressed concern about the practice and noted that a response from the Ivoirian government had not been received at the time the report was prepared.

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/1998/101, paras. 53, 104)

The section of the report on the protection of children against harmful influences through the media recalls that since the early 1990s, children in Europe have, in principle, been protected against exposure to gratuitous violence on television by the European Convention on Transfrontier Television and the Television without Frontiers Directive issued by the European Union. The

report refers to new developments in the media and the paedophile murders in Belgium, which revealed the use of the Internet to disseminate child pornography, noting that these developments have increased political pressure to take additional measures to protect minors against abuse and exposure to media content which could be considered harmful to their development. On the subject of education as a catalyst the report notes that the Belgian National Committee for UNICEF has encouraged the Ministry of Education to promote awareness-raising on sexual exploitation and abuse in schools through school curricula and education programmes. The National Committee has also formed a working group with relevant partners to focus on the development of prevention activities. In the Belgian French community, a public campaign was directed at raising awareness on the abuse and sexual exploitation of children. A training centre initiative for missing and exploited children has also been planned.

**Toxic wastes and products, Special Rapporteur:** (E/CN.4/1998/10, paras. 12, 43–44)

The report cites information indicating that, in October 1996, the Lebanese factory Saltex imported two containers of mixed plastic wastes, some of which were contaminated with chemicals, while declaring the shipment as plastic bags. The two containers arrived in Beirut from Belgium and were confiscated by the Lebanese authorities.

The government informed the Special Rapporteur that the authorities had conducted an investigation and found that the waste belonged to the "orange category" which requires notification prior to exportation. The waste producer did not provide the notification and made a commitment to take back the containers. The government noted that a *procès verbal* had been initiated against the exporter and the amount of the fine to be levied against the exporter was being determined.



## CANADA

**Date of admission to UN:** 9 November 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Canada has submitted a core document (HRI/CORE/1/Add.91) for use by the treaty bodies. The report prepared by the government contains demographic and statistical data and information on the general political structure and the general legal framework for the protection of human rights. The legislative, executive and judicial branches of government share responsibility for the protection of human rights. The primary role of the judicial branch of government in the human rights area is providing redress to individuals for violations of their human rights. More generally, as an inte-

gral part of the adjudication of disputes, the courts interpret the Canadian Charter of Rights and Freedoms and human rights codes or legislation, as well as other relevant legislation, and are responsible for the development of the common law ("judge-made law"). The Supreme Court of Canada has stated that the common law must be interpreted, developed and, if necessary, amended to reflect the values of the Canadian Charter of Rights and Freedoms.

The Canadian Charter of Rights and Freedoms (1982) guarantees: the freedoms of conscience and religion, thought, belief, opinion and expression, peaceful assembly and of association; democratic rights; mobility rights; the right to life, liberty and security of the person; due process; equality before and under the law, recognition of French and English as the two official languages of Canada; and minority-language educational rights. Various modes of redress for human rights violations are available, depending on the nature of the right infringed and the form of remedy sought. Relevant authorities include the courts, statutory bodies created to administer particular legislation (variously known as commissions, boards, committees or tribunals) and ombudsmen. The primary means of enforcing the human rights codes (concerned mainly with discrimination) which have been enacted everywhere in Canada is through the human rights commissions established under them. Individuals who claim to be victims of discrimination may file complaints with the appropriate commission. These complaints are then investigated and there may be a conciliation process. If necessary, a board of inquiry or human rights tribunal determines the legal merits of the complaint. International human rights conventions that Canada has ratified apply throughout Canada federally and in all provincial and territorial jurisdictions.

#### **Economic, Social and Cultural Rights**

Acceded: 19 May 1976.

Canada's third periodic report (E/1994/104/Add.17) was considered at the November/December 1998 session of the Committee; the fourth periodic report is due 30 June 2000.

#### **Civil and Political Rights**

Acceded: 19 May 1976.

Canada's fourth periodic report (CCPR/C/103/Add.5) has been submitted and is scheduled for consideration by the Committee's March 1999 session; the fifth periodic report is due 8 April 2000.

*Reservations and Declarations:* Declaration under article 41.

**Optional Protocol:** Acceded: 19 May 1976.

#### **Racial Discrimination**

Signed: 24 August 1966; ratified: 14 October 1970.

Canada's 13th and 14th periodic reports were due 13 November 1995 and 1997 respectively.

#### **Discrimination against Women**

Signed: 17 July 1980; ratified: 10 December 1981.

Canada's fifth periodic report is due 9 January 1999.

#### **Torture**

Signed: 23 August 1985; ratified: 24 June 1987.

Canada's third periodic report was due 23 July 1996.

*Reservations and Declarations:* Declarations under articles 21 and 22.

#### **Rights of the Child**

Signed: 28 May 1990; ratified: 13 December 1991.

Canada's second periodic report is due 11 January 1999.

*Reservations and Declarations:* Articles 4, 21, 30; paragraph (c) of article 37.

### **REPORTS TO TREATY BODIES**

#### **Committee on Economic, Social and Cultural Rights**

Canada's third periodic report (E/1990/104/Add.17, April 1997) was considered by the Committee at its November 1998 session. The report reflects the multi-jurisdictional nature of Canada and the main changes in federal policies, laws and programs since the submission of the second report on articles 6 through 9 (December 1987) and on articles 10 through 15 (September 1992). Part I reviews, *inter alia*: jurisprudence relative to the Covenant, the scope of the Canadian Charter of Rights and Freedoms, the role of governments in litigation, the Court Challenges Program, the scope of human rights legislation, the training of the judiciary, and relevant case law. Part II is based on federal considerations and contains information on, *inter alia*: the Canada Health and Social Transfer (CHST); development of a National Child Benefit System, the Employment Insurance Program 1996; measures to address poverty and hunger; housing, an adequate standard of living; and changes to the Canadian Human Rights Act to address discrimination. Part III of the report contains information relative to each of the 10 provincial governments, and Part IV reflects information provided by the two territorial governments.

The Committee's concluding observations and comments (E/C.12/1/Add.31) noted, *inter alia*: that for the last five years, Canada has been ranked at the top of the UNDP Human Development Index; the UNDP Human Poverty Index ranks Canada tenth on the list for industrialized countries; that the Supreme Court has held that section 15 (equality rights) of the Canadian Charter of Rights and Freedoms (the Charter) imposes positive obligations on governments to allocate resources and to implement programmes to address social and economic disadvantage; that the Human Rights Tribunal in Quebec has, in a number of decisions, considered the Covenant in interpreting Quebec's Charter of Rights, especially in relation to labour rights; appointment of the Royal Commission on Aboriginal Peoples (RCAP) and RCAP's 1996 report; reinstatement of the Court Challenges Program; the statement by the Canadian Human Rights Commission

on the inadequate protection and realization of economic and social rights and its proposal for the inclusion of those rights in human rights legislation; and the high percentage of women attending university and their increasing access to the liberal professions traditionally dominated by men.

In terms of factors hindering implementation of the Covenant, the Committee referred to: cuts in social spending since 1994 as part of the effort to remedy budget deficits, and the adverse consequences of these cuts on the realization of economic, social and cultural rights; the complexities inherent in the federal system, and the fact that unless a right under the Covenant is implicitly or explicitly protected by the Charter through federal-provincial agreements, or incorporated directly into provincial law, there is no legal redress available in cases where provinces have failed to implement the Covenant; and the absence of an official poverty line.

The principal subjects of concern identified by the Committee included, *inter alia*: information indicating that provincial courts have routinely opted for an interpretation which excludes protection of the right to an adequate standard of living and other Covenant rights; the inadequate legal protection of women's rights, such as the absence of laws requiring employers to pay equal remuneration for work of equal value in some provinces and territories, restricted access to civil legal aid, inadequate protection from gender discrimination, and the inadequate enforcement of those human rights laws; the lack of progress in the alleviation of social and economic deprivation among Aboriginal peoples; the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal peoples from their lands; the failure of the government(s) to implement fully the recommendations of the RCAP; the adverse consequence for disadvantaged groups from the replacement of the Canada Assistance Plan (CAP) by the Canada Health and Social Transfer (CHST); the newly-introduced successive restrictions to unemployment insurance benefits resulting in a dramatic drop in the proportion of unemployed workers receiving benefits; cuts in social assistance in some provinces causing increases in already high levels of homelessness and hunger; the repeal of CAP, resulting in cuts to social assistance rates, social services and programmes that have had a particularly harsh impact on women, in particular single mothers; and insufficient action to address the problem of homelessness and inadequate housing, noting that the mayors of the ten largest cities have declared homelessness a national disaster.

Concern was also raised with regard to: the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing which create obstacles to women escaping domestic violence; the fact that Aboriginal women living on reserves do not realize the same rights as women living off reserves to an equal share of matrimonial property at the time of marriage breakdown; adoption by at least six

provinces of "workfare" programmes that either submit the right to social assistance to compulsory employment schemes or reduce the benefit of social assistance when recipients assert their right to choose freely what type of work they wish to do; adoption by the Ontario legislature of Bill 22, entitled "An Act to Prevent Unionization", which denies to workfare participants the rights to join a trade union, to bargain collectively and to strike; the minimum wage, which is not sufficient for a worker to have an adequate standard of living; information indicating that the number of foodbanks has almost doubled between 1989 and 1997; significant cuts to services on which people with disabilities rely; inadequacies in programmes for people who have been discharged from psychiatric institutions; the situation of thousands of "Convention refugees" who cannot be given permanent resident status for a number of reasons; the fact that 20 per cent of the adult population is functionally illiterate; loan programmes for post-secondary education which are not available to recognized refugees and asylum seekers; increases in tuition fees for university education and the significant increase in the average student debt on graduation.

The Committee recommended that the government(s), *inter alia*:

- ♦ consider re-establishing a national programme with designated cash transfers for social assistance and social services, specifying a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal, and a right to move freely from one job to another;
- ♦ establish officially a poverty line and social assistance at levels which ensure the realization of an adequate standard of living for all;
- ♦ act urgently with respect to the recommendations of the RCAP and take concrete and urgent steps to ensure respect for Aboriginal economic, land and resource-based rights so as to achieve sustainable Aboriginal economies and cultures;
- ♦ amend the National Child Benefit Scheme so as to prohibit provinces from deducting the benefit from social assistance entitlements;
- ♦ reform the Employment Insurance Programme so as to provide adequate coverage for all unemployed workers, in a benefit amount and for a duration of time, which fully implements their right to social security;
- ♦ address homelessness and inadequate housing as a national emergency; reinstate or increase social housing programmes for those in need; improve and properly enforce anti-discrimination legislation in housing; provide adequate support services for persons with disabilities; implement a national strategy for the reduction of homelessness and poverty;
- ♦ develop and expand programmes to address the financial obstacles to post-secondary education for

low-income students, without any discrimination on the basis of citizenship status;

- ♦ adopt positions in litigation which are consistent with the obligation to uphold the rights recognised in the Covenant; expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status;
- ♦ adopt the necessary measures to ensure the realization of women's economic, social and cultural rights, including the right to equal pay for work of equal value; direct a greater proportion of budgets to measures to address women's poverty and the poverty of their children, affordable day care, and legal aid for family matters; implement measures that will establish adequate support for shelters for battered women, care-giving services and women's NGOs;
- ♦ review "workfare" legislation in order to ensure that none of the provisions violate the right to work freely chosen and other labour standards;
- ♦ give an even higher priority to measures to reduce the rate of functional illiteracy; and
- ♦ extend the Court Challenges Programme to include challenges to provincial legislation and policies which may violate the provisions of the Covenant.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Freedom of opinion and expression, Special Rapporteur on: (E/CN.4/1998/40, para. 53)

In the section on women and freedom of expression, the Special Rapporteur made reference to the report of the Canadian Panel on Violence against Women which stated that Canadian women have not enjoyed freedom of expression because their fear causes a reluctance to speak out about the violence they experience. The Panel also stated that: Canadian institutions have contributed to this situation by denying that such violence can exist, thereby supporting misogyny and abuse of power; women victims of violence in Canada, in common with women in every country, often keep silent about what has or is happening to them for a number of reasons, including fear of reprisal, shame, the belief that they are somehow responsible for the violence, the knowledge that they will not be believed, and, in some cases, suppression of the memory of violence because it is too painful to recall; research on the issue of violence against women in Canada remains incomplete because of exclusion, that is, very little research has focussed on the experiences of Inuit and Aboriginal women, women of colour, immigrant and refugee women, rural, poor or homeless women, women with disabilities, women with low literacy skills, and lesbians; and, while much research has been carried out in French and/or English, women who do not understand or speak either of these languages have been further excluded.

#### Racism and racial discrimination, Special Rapporteur on: (E/CN.4/1998/79, paras. 53, 72)

The report notes that allegations of racist incidents, racial discrimination, xenophobia and/or anti-Semitism were sent to the government. The government had not replied. No details of the cases or incidents were provided.

#### Sale of children, child prostitution, child pornography, Special Rapporteur on the: (E/CN.4/1998/101, paras. 8, 86, 90, 121)

Commentary on new media and the child as the subject of pornography, states that child pornography is now being created without using real children, and cites a case in Canada in 1993, which involved the conviction of a man who had posted on the Internet images depicting him having sex with girls, although he had never photographed or filmed actual children or manipulated images to create pseudo-photos. The report notes that under Canadian law, child pornography includes not only materials involving actual children, but those conveying the impression of children involved in sex, or advocating sex with a child under the age of 18. The legislation is based on the reasoning that the harm caused by child pornography extends beyond the direct abuse of children in its production and such material has great potential to promote child sexual abuse whether or not the child portrayed is a real individual.

With regard to education, the report refers to several programmes directed at children who are involved in, or are at risk of being lured into, prostitution. Most of the programmes aim to contact and help children decide whether to return home or receive counselling, housing, education, and employment. There are also education programmes to teach young people how to become "streetwise" as well as training programmes for teachers, social workers and others, that explain the dynamics of child prostitution, as well as programmes for parents who are trying to get their children off the streets. Reference is made to information provided by police to parents which includes a 24-point questionnaire to ascertain how parents communicate with their children, and how aware children are of safe behaviours under a variety of circumstances, including how to deal with approaches of a sexual nature.

The Special Rapporteur's (SR) interim report to the 1998 General Assembly (A/53/311, para. 61) refers to organized crime networks using children in various capacities, and notes reports indicating that in Canada a large drug ring is luring children from Honduras to Vancouver where they are being turned into "street-corner crack dealers". According to the Vancouver police, as many as 100 Honduran children have been smuggled into Canada. The Honduran smugglers reportedly pay the children's transportation costs and help them across the Canadian border. Once in Vancouver, the ringleaders allegedly place the children in apartments and help them file refugee claims and register for welfare. In return, the children, some as young as 11 years old, are forced to sell drugs on the street to pay off their "debt" to the smug-

glers. The SR welcomed reports that British Columbia's Ministry of Children and Families is working with the police and immigration officials to find ways to repatriate the children, but expressed concern that any decision regarding the children must reflect their best interests and in no way define them as criminals.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, para. 62)

The report refers to the high cost of disposal or recycling operations in the countries where wastes are generated and notes that this has led to a proliferation of programmes involving the so-called "legal" exporting of wastes for "recycling". The report notes that among OECD countries Canada is one of the largest exporters of such products.

**Violence against women, Special Rapporteur on:** (E/CN.4/1998/54, Section III.B)

The report notes that in 1996, Canada reissued its 1993 "Gender Guidelines for Asylum Adjudications", through which Canada became the first government to recognize formally that a woman fleeing persecution on gender-specific grounds can claim "fear of persecution on account of her membership in a particular social group". The Special Rapporteur (SR) stated that the Canadian experience has shown that female claimants generally fall into four main categories, namely those who fear persecution: on the same basis as men, or because of their kinship and/or family relations, or because of a failure to conform to social mores and cultural norms, or because of violence committed against them due to their gender. The SR noted that the Supreme Court has incorporated the "gender" element in its reinterpretation of "social group", describing it as a section of society "defined by an innate or unchangeable characteristic" such as "gender, linguistic background or sexual orientation".

The report cites a case that was heard in the Federal Court of Appeal (*Mazers v. Canadian Minister of Employment and Immigration*) involving a group of Trinidadian women who were victims of domestic violence and had sought asylum. On appeal, the judge in the case stated that a "particular social group" means a natural or non-natural group of persons with similar shared background, habits, social status, political outlook, education, values, aspirations, history, economic activity or interests contrary to those of the prevailing government, and sharing basic, innate, unalterable characteristics, consciousness and solidarity. The report also refers to a refugee claimant who feared forcible sterilization if returned to China. The dissenting opinion rendered in the case on appeal found that forced sterilization could be considered persecution in that "it is utterly beyond dispute that forced sterilization is in essence an inhuman and degrading treatment involving body mutilation and constitutes the very type of fundamental violation of basic human rights that is the concern of refugee law."

The SR cited a third case in which a Chinese national had been employed as a birth control officer for three years in his commune. On four occasions he participated with

other officers in seeking out women who had violated the one-child policy imposed by the government, tying the women up and taking them to the hospital where they were forcibly aborted or sterilized. He testified that he was aware of all the methods used to implement the one child policy in his commune, including forcible abortion on women in advanced stages of pregnancy, and the killing by injection of fetuses born alive. The claimant was excluded from being granted asylum in Canada under article 1 F (a) of the 1951 Convention on the Status of Refugees, on the basis that the claimant had been an active participant in persecutory acts amounting to crimes against humanity. It was undisputed that the claimant was an accomplice to crimes against humanity as he was a knowing member of a birth control unit whose objective was to implement birth control policies, including forcible abortion and sterilization. The Federal Court of Canada denied leave for judicial review of this decision.



## DENMARK

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Denmark has submitted a core document (HRI/CORE/1/Add.58) for use by the treaty bodies. The report prepared by the government contains demographic and statistical data as well as information on the system of government, the court system, jurisdictions related to human rights, remedies, compensation and rehabilitation, and human rights guaranteed in the constitution and law.

The Constitution establishes the framework for the protection of civil, cultural, economic, political and social rights. The basic assumption of equality is the major principle in all spheres of law. The Equal Status Council was established in 1978 to promote equality between women and men and to examine circumstances either on its own initiative or in response to applications from individuals relating to equality. However, the Council has no power to sanction discrimination. The Act on the Prohibition of Differential Treatment on the Grounds of Race 1971 is aimed at eliminating all forms of racial discrimination and the Criminal Code has been amended to prohibit statements or the communication of information that threatens, insults or degrades a group of people on account of race, colour, national or ethnic origin, religion or sexual orientation. The Board of Ethnic Equality Act 1993 established a mechanism to combat unequal treatment in all its aspects and to ensure that all ethnic groups in society are given equal opportunities. International human rights treaties are not automatically incorporated into domestic law but provisions of these conventions are applicable before the courts and administrative authori-

ties. The European Convention on Human Rights has been incorporated as an ordinary statute in order to provide an explicit basis for its application.

#### **Economic, Social and Cultural Rights**

Signed: 20 March 1968; ratified: 6 January 1972.  
Denmark's third periodic report (E/1994/104/Add.15) is scheduled for consideration at the Committee's April/May 1999 session; the fourth periodic report is due 30 June 1999.  
*Reservations and Declarations:* Paragraph (d) of article 7.

#### **Civil and Political Rights**

Signed: 20 March 1968; ratified: 6 January 1972.  
Denmark's fourth periodic report was due 31 December 1998.  
*Reservations and Declarations:* Paragraph 3 of article 10; paragraphs 1, 5 and 7 of article 14; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Signed: 20 March 1968; ratified: 6 January 1972.

*Reservations and Declarations:* Paragraph 2 (a) of article 5.

**Second Optional Protocol:** Signed: 13 February 1990; ratified: 24 February 1994.

#### **Racial Discrimination**

Signed: 21 June 1966; ratified: 9 December 1971.  
Denmark's 14th periodic report is due 8 January 1999.  
*Reservations and Declarations:* Declaration under article 14.

#### **Discrimination against Women**

Signed: 17 July 1980; ratified: 21 April 1983.  
Denmark's fourth periodic report (CEDAW/C/DEN/4) has been submitted but is not yet scheduled for consideration by the Committee; the fifth periodic report is due 21 May 2000.

#### **Torture**

Signed: 4 February 1985; ratified: 27 May 1987.  
Denmark's fourth periodic report is due 25 June 2000.  
*Reservations and Declarations:* Declaration under articles 21 and 22.

#### **Rights of the Child**

Signed: 26 January 1990; ratified: 19 July 1991.  
Denmark's second periodic report (CRC/70/Add.6) has been submitted and is pending for consideration at the Committee's January 2001 session; the third periodic report is due 17 August 2003.  
*Reservations and Declarations:* Paragraph 2 (b) (v) of article 40.



## **FINLAND**

**Date of admission to UN:** 14 December 1955.

### **TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** Finland has submitted a revised core document (HRI/CORE/1/Add.59/Rev.2) for use by the treaty bodies. The report prepared by the government contains demographic and statistical data and information on the constitutional basis and general political structure as well as the general legal framework for the protection of human rights. Amended chapter II of the Constitution Act, containing provisions on fundamental rights, entered into force on 1 August 1995. The reform of the legislation on fundamental rights modernized the system and stipulated that fundamental rights now apply to all persons (the Constitution formerly only mentioned "the rights of Finnish citizens"). The reform aimed at the convergence of the domestic system of fundamental rights with the international obligations of human rights, and expanded the scope of fundamental rights to include economic, social and cultural rights, rights relating to the individual's legal safety, the right to vote and be elected and the right to participate in the activities of society as well as rights concerning the environment. Domestic statutes are to be interpreted in accordance with human rights in order to avoid conflict between domestic legislation and human rights instruments. It is possible to refer directly to the provisions of the human rights treaties before courts and authorities. The supervision of the observance of human rights by the public authorities is within the competence of the Parliamentary Ombudsman and the Chancellor of Justice of the Council of State. At the legislative stage, it is the duty of the Parliamentary Committee for Constitutional Law to observe that legislative proposals conform to human rights instruments.

#### **Economic, Social and Cultural Rights**

Signed: 11 October 1967; ratified: 19 August 1975.  
Finland's fourth periodic report is due 30 June 1999.

#### **Civil and Political Rights**

Signed: 11 October 1967; ratified: 19 August 1975.  
Finland's fourth periodic report (CCPR/C/95/Add.6) was considered at the Committee's March/April 1998 session; the fifth periodic report is due 18 August 1999.  
*Reservations and Declarations:* Paragraphs 2 (b) and 3 of article 10; paragraph 7 of article 14; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Signed: 11 December 1967; ratified: 19 August 1975.

**Second Optional Protocol:** Signed: 13 February 1990; ratified: 4 April 1991.

#### **Racial Discrimination**

Signed: 6 October 1966; ratified: 14 July 1970.  
Finland's 13th and 14th periodic reports were submitted

as one document (CERD/C/320/Add.2) which is pending for the Committee's March 1999 session; the 15th periodic report is due 13 August 1999.

### Discrimination against Women

Signed: 17 July 1980; ratified: 4 September 1986.

Finland's third periodic report (CEDAW/C/FIN/3) has been submitted and is pending for the Committee's January 1999 session; the fourth periodic report is due 4 October 1999.

### Torture

Signed: 4 February 1985; ratified: 30 August 1989.

Finland's third periodic report (CAT/C/44/Add.5) has been submitted and is pending consideration at the Committee's November 1999 session.

*Reservations and Declarations:* Declaration under articles 21 and 22.

### Rights of the Child

Signed: 26 January 1990; ratified: 20 June 1991.

Finland's second periodic report (CRC/C/70/Add.3) has been submitted and is pending for the Committee's October 2000 session; the third periodic report is due 19 July 2003.

## REPORTS TO TREATY BODIES

### Human Rights Committee

Finland's fourth periodic report (CCPR/C/95/Add.6, August 1995) was considered by the Committee at its April 1998 session. The report prepared by the government focuses on amendments to the provisions on fundamental rights in the Constitution Act. The reform was aimed at increasing the direct applicability of fundamental rights in the courts and by other public authorities, tightening the conditions under which fundamental rights may be restricted, and clarifying the system of supervising fundamental rights by including basic provisions relating to them in the Constitution. The report contains information on, *inter alia*: the special status of the Åland Islands and the new Autonomy Act 1991; the rights and protections of the Samis; protection of the rights of Romanians, Russian immigrants and other minorities; extension of rights protections in a number of areas to aliens; inclusion in the reformed law of a general prohibition against discrimination and extension of forms and manifestations of discrimination punishable by law; the Act on Equality between Women and Men; legal provisions related to derogation and the new State Defence Act; reforms related to life, liberty and security of person; recidivism and preventive detention; freedom of movement and choice of residence; deportation procedures and the right to asylum; revisions to criminal procedures; sanctions for marital rape; the right to privacy; freedom of religion and non-military service; freedom of expression and opinion, the right to information, the right to publish; peaceful assembly and the right to association, trade unions; and the right to vote and be elected.

The Committee's concluding observations and comments (CCPR/C/79/Add.91) welcomed: Finland's ratification of the Second Optional Protocol, the reform of the Constitution to incorporate the provisions of the Covenant and other human rights instruments into the Constitution; the extension of the application of fundamental rights to non-citizens; reform of criminal procedure which, *inter alia*, ensures detainees are brought to court without delay and have the right to a speedy trial and communication with family and counsel; the constitutional recognition of the Sami and Roma people and of their rights, along with other groups, to develop their language and culture; the existence of Advisory Boards for both Sami and Romani Affairs, mandated to advance the interests of these minority populations; the right of Samis, since 1992, to communicate with the authorities in their native language and to be consulted through their representatives on matters affecting them closely; and provisions that primary and secondary education students may be taught in their mother tongue of Sami or Romani.

The Committee also welcomed: efforts to promote racial tolerance by the establishment of the Parliamentary Ombudsman, the Chancellor of Justice, the Ombudsman for Aliens, and the Advisory Board for Refugee and Migrant Affairs, as well as the implementation of a human rights curriculum in the school; efforts to safeguard the well-being of women and children in domestic abuse situations by the establishment of nationwide crisis centres and shelters and the treatment of men who abuse; criminalization of rape in marriage and new measures to combat trafficking in women and children; and implementation of the Aliens Act and other legislative measures which broaden the criteria for the issuance of residency permits, create procedures for review of deportation decisions and give the Ombudsman for Aliens a role in these proceedings, and give alien residents the right to vote in local elections.

Subjects of concern identified by the Committee included, *inter alia*: the possibility that criminal law alone may not be appropriate to determine suitable remedies for violations of certain rights and freedoms; that the issue of land rights of the Sami have not been resolved; the continuing disparity in remuneration between the sexes and the relatively low proportion of women in higher levels of the public service; continuing *de facto* discrimination against members of the Roma minority, especially in the area of private housing, employment and services; the apparent provision in law that, after due notice, a person charged before the courts with certain offences may be tried in absentia, if his or her presence was not necessary, and sentenced to a fine or up to three months' imprisonment with no possibility for retrial after 30 days; the increase in negative attitudes and *de facto* discrimination toward immigrants among some of the population, and also of instances of violence; and that there is still legal provision for preventive detention of certain convicted persons ("dangerous recidivists") to be determined by the Prison Court.

Concern was also raised over: the fact that Swedish-speaking persons do not always have the possibility of using their language in dealing with authorities; the practice of holding asylum seekers and aliens with irregular status in public prisons and police detention places pending inquiry as to their status; and the fact that Jehovah's Witnesses are granted by domestic law preferential treatment as compared with other groups of conscientious objectors.

The Committee recommended that the government, *inter alia*:

- ♦ continue to give priority to positive measures and to civil processes which are able to determine issues of compensation or other remedies, especially in cases of discrimination;
- ♦ make efforts to provide to the Sami and Roma minority printed texts of all available human rights documents, translated into the Sami and Roma languages where possible, noting that "important" UN and European conventions are already translated into Sami languages and disseminated to the Sami;
- ♦ provide training to government agencies to intervene positively to help to overcome racist attitudes and to initiate proceedings where any pattern of discrimination is identified, particularly against the Roma;
- ♦ review the procedure allowing for trial *in absentia*;
- ♦ take further positive steps to overcome discriminatory and xenophobic attitudes and prejudice, and to foster tolerance;
- ♦ consider withdrawing the remaining reservations entered to the Covenant;
- ♦ give consideration to implementing the current proposals for the reform of indefinite imprisonment, in light of existing provisions on preventive detention; and
- ♦ implement the proposal to establish separate holding areas for asylum seekers and aliens with irregular status.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Sale of children, child prostitution, child pornography, Special Rapporteur on the: (E/CN.4/1998/101, paras. 6, 101)

In the section concerning children as viewers of sexually explicit material on the Internet, the report refers to the anonymity which the Internet provides as is its most important asset to users who seek to access sensitive information. Commenting on the possibility to re-route e-mail and images through "anonymous re-mailers" the Special Rapporteur (SR) noted that in Finland one such re-mailer service was voluntarily closed down by the

operator who was accused of paedophilia, an accusation strongly denied. The SR also noted that a British organization, "The Samaritans" — which counsels people contemplating suicide and which has increasing numbers of computer contacts, many of whom used the "re-mailer" service to remain anonymous — reacted adversely to the shut-down.

### Mechanisms and Reports of the Sub-Commission

#### Traditional practices affecting the health of women and girls, Special Rapporteur on: (E/CN.4/Sub.2/1998/11, paras. 78–82)

The report refers to information provided by the government related to measures to abolish female circumcision. Under Finnish law, genital mutilation of women and girls is a crime punishable under the Criminal Code, whether it is committed in Finland or abroad. According to the severity of the operation, the penalty may entail several years of imprisonment. With regard to education, the government noted that basic education includes information on female genital mutilation and therefore all young people attending school are informed. As for women and children who have come from countries with different cultures, efforts are made to inform them of the harm caused by female genital mutilation and of the penalties which the practice entails through a brochure on the subject published by the Ministry of Labour and the Ministry of Social Affairs. Courses have been held for members of the medical profession in order to prepare them for treating immigrants from such countries as Somalia. The government noted that the social security services and members of the medical professions, as well as teachers, have an obligation to intervene in situations where the health and development of a child are threatened.



## FRANCE

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** France has submitted a core document (HRI/CORE/1/Add.17/Rev.1) for use by the treaty bodies. The report contains demographic data as well as information on the general political structure and the legal framework for the protection of human rights.

A number of offices and institutions have jurisdiction in matters related to human rights and include the Constitutional Council, ordinary courts (civil, district, major jurisdiction, commercial, labour, social security tribunals, joint agricultural tenancy tribunals), juvenile courts, military courts, courts of appeal, the Court of Assizes, the Court of Cassation, appeal courts and the Council of State. Remedies for violations may be claimed

in the courts as well as through non-judicial procedures such as the office of the Ombudsman. The Ombudsman is independent and appointed by Cabinet decree for one term of six years. Under the Constitution, treaties ratified by France and published take precedence over law and the provisions of international conventions are incorporated directly into French law.

### **Economic, Social and Cultural Rights**

Acceded: 4 November 1980.

France's second periodic report was due 30 June 1992; the third periodic report was due 30 June 1997.

*Reservations and Declarations:* Articles 6, 8, 9, 11 and 13.

### **Civil and Political Rights**

Acceded: 4 November 1980.

France's fourth periodic report is due 31 December 2000.

*Reservations and Declarations:* Paragraph 1 of article 4; articles 9, 13, 14, 19, 20, 21, 22 and 27.

**Optional Protocol:** Acceded: 17 February 1984.

*Reservations and Declarations:* Article 1; paragraph 2 (a) of article 5; article 7.

### **Racial Discrimination**

Acceded: 28 July 1971.

France's 12th, 13th and 14th periodic reports were due 27 August 1994, 1996 and 1998 respectively.

*Reservations and Declarations:* Articles 4, 6 and 15.

### **Discrimination against Women**

Signed: 17 July 1980; ratified: 14 December 1983.

France's third periodic report was due 13 January 1993; the fourth periodic report was due 13 January 1997.

*Reservations and Declarations:* Paragraph 11 of the Preamble; article 9; paragraph (b) of article 5; article 17; paragraph 1 (d) of article 16; paragraph 2 (c) and (h) of article 14; paragraph 1 (g) of article 16; paragraph 1 of article 29.

### **Torture**

Signed: 4 February 1985; ratified: 18 February 1986.

France's second periodic report (CAT/C/17/Add.18) was considered at the Committee's May 1998 session; the third periodic report was due 25 June 1996.

*Reservations and Declarations:* Article 30; declaration under articles 21 and 22.

### **Rights of the Child**

Signed: 26 January 1990; ratified: 7 August 1990.

France's second periodic report was due 5 September 1997.

*Reservations and Declarations:* Articles 6 and 30; paragraph 2 (b) (v) of article 40.

## **REPORTS TO TREATY BODIES**

### **Committee against Torture**

France's second periodic report (CAT/C/17/Add.18, December 1996) was considered by the Committee at its May 1998 session. The report prepared by the govern-

ment contains information on, *inter alia*: the general legal framework for the protection of human rights; the definition of torture; the 1994 Code of Criminal Procedure, relevant provisions in the 1994 Criminal Code; Act No. 82-261 (1982) reorganizing the military system of justice, the Code of Military Justice and states of emergency; the 1986 Code of Ethics of the National Police Force; refolement, deportation and expulsion procedures, extradition; the Code of Medical Ethics as amended in 1995; rights related to custody and imprisonment, medical and judicial supervision; conditions in holding areas and detention facilities for persons seeking admission to France, the right to asylum; administrative detention, judicial confinement, committal to a psychiatric service; investigations and judicial inquiries into allegations of torture and ill treatment; remedy and compensation; protection against acts of torture, violence, subornation; relevant provisions in the Civil Code; and the probative force of evidence.

The Committee's concluding observations and comments (CAT/C/FR) welcomed, *inter alia*, changes to the Criminal Code, creation of professional codes of ethics; elaboration of guidelines on use of force; and improvements in procedures related to the rights of those detained and limits on pre-trial detention.

The principal subjects of concern identified by the Committee included, *inter alia*: the absence of a definition in law of the act of torture; provisions by which prosecutors may decide not to investigate allegations of torture or prosecute those identified as responsible; that evidence acquired through torture may still be used before the courts; the failure to prohibit refolement or extradition to a country where there are grounds to believe torture may occur; and sporadic allegations of violence by police during arrest and/or interrogation.

The Committee recommended that the government, *inter alia*:

- ♦ incorporate into domestic legislation a definition of torture that is consistent with the Convention;
- ♦ take steps to improve procedures related to expulsion and refolement to ensure consistency with article 3 of the Convention; and
- ♦ ensure impartial investigation into allegations of police violence, torture or ill treatment and appropriate sanctions against any member of the police found to be responsible.

## **THEMATIC REPORTS**

### **Mechanisms of the Commission on Human Rights**

#### **Arbitrary detention, Working Group on:**

(E/CN.4/1998/44, para. 8; E/CN.4/1998/44/Add.1, Opinion No. 8/1997)

Opinion No. 8/1997, adopted by the Working Group (WG) in May 1997, referred to a case involving one

person that had been transmitted to the government in 1996. The government informed the WG that the individual had since been released. On that basis, and without comment on the nature of the detention, the WG filed the case. No details were provided.

**Extrajudicial, summary or arbitrary execution, Special Rapporteur on:** (E/CN.4/1998/68, paras. 16, 17; E/CN.4/1998/68/Add.1, paras. 172–177)

The report notes replies from the government to cases that were transmitted in 1995 and 1996. These cases related to, *inter alia*: (a) a 17 year old Zairian who died while being interrogated at a police station in Paris; the Paris Court of Assize sentenced the police inspector to eight years' imprisonment for inflicting fatal injuries with use or threatened use of a weapon on the person; relatives received compensation of 165,000 francs; (b) an Iranian opposition publisher who was allegedly killed in his apartment in the Paris; information had been laid before the court against an unknown person for assassination related to a terrorist organization and the inquiry had been placed in the hands of the first Vice President in charge of investigation at the Paris Court of Major Jurisdiction; (c) two other cases remained under investigation; and (d) an investigation was carried out in another case to establish whether or not the action of the gendarmerie had been in compliance with the legal provisions regarding the use of weapons; subsequent to completion of the investigation the authorities rejected the allegation of an extrajudicial, summary or arbitrary execution.

**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/1998/39, paras. 17, 68–69)

The Special Rapporteur (SR) sent a communication to the government regarding a strike on 6 November 1997 in which 33,000 French lawyers participated. The strike was held to draw the government's attention to the lack of human and financial resources of the French justice system which had resulted in a large backlog of cases in the courts. In addition, the SR requested the government to provide information on the latest developments relating to the draft reform of the judicial system in France. As of the date the report was prepared, the government had not responded.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, paras. 53, 72, 108, 118–120)

The Special Rapporteur (SR) recalled comments in the report to the 1997 session of the General Assembly (A/51/301) related to the increased severity of the Pasqua/Debré laws governing foreign residents, and the determination of the French authorities to adopt measures designed to strengthen control over immigration by non-Europeans. The report notes that the measures envisaged included: making the issuance of short-stay visas more systematically subject to proof of health insurance, a formality which would be required of nationals of countries where the "migratory risk" was high; improving

the identification of visa applicants from those countries; reforming the procedure for the issuance of the "*certificat d'hébergement*" by requiring, *inter alia*, the provider of accommodation to give notice of the visitor's departure; restricting hospital care for illegal immigrants to "emergencies" or to diseases likely to be contagious; and extending the period of detention for persons who entered France illegally to 40 days. These measures were considered by the SR to be discriminatory.

The SR welcomed new measures envisaged by the new government reflecting a trend markedly different from the approach evident in the Pasqua/Debré laws. The measures would address such points as regularization of the status of certain categories of undocumented aliens and the drafting of a preliminary bill on the entry and stay of foreign nationals in France. The bill would contain provisions designed to facilitate the stay of foreign nationals and the granting of visas, the latter with particular reference to researchers, students and persons with strong ties to France (parents, descendants, spouses, etc.). The report notes that another bill, related to nationality, was under discussion in the French Parliament and aimed at reversion to the *jus soli* system.

The Special Rapporteur's (SR) interim report to the 1998 General Assembly (A/53/269, paras. 31–32) notes that Charles Pasqua, former Minister of the Interior, during whose term of office immigration control laws were adopted, proposed in July 1998 in the wake of France's World Cup victory that the status of all undocumented aliens should be regularized. Fifty-three per cent of those polled for a survey conducted by the French Public Opinion Institute (Institut français d'opinion publique), the *Journal du Dimanche* and *Le Monde* endorsed the proposal. The SR cited another poll, taken by the French National Commission on Human Rights (Commission nationale consultative française des droits de l'homme) which showed that 38 per cent of all French men and women say that they are openly racist, 27 per cent feel that there are too many Blacks in France, while 56 per cent feel that there are too many Arabs.

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/1998/101, paras. 23, 74)

The report refers to the fact that France undertook one of the most complete investigations against a paedophile ring in recent years. Some 2,500 policemen were fielded to search about 800 homes throughout the country after the beginning of a trial in Paris of 71 French men accused of organizing or subscribing to a paedophile video network involving young boys. Within a week there were 323 persons under investigation. The report noted that five of these men committed suicide rather than face investigation and trial. The Special Rapporteur notes that there was criticism of the intense media coverage of the widespread investigations into paedophilia, and reiterated that it is of paramount importance to ensure that any such trial is fair, and that it is so perceived by the defendant.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, para. 62; E/CN.4/1998/10/Add.1, see "France")

The report notes that France is among the OECD countries which exports wastes for "recycling" to developing countries and/or countries in Central and Eastern Europe. The addendum to the main report includes information provided by the government in response to commentary and allegations contained in the Special Rapporteur's (SR) report to the 1997 Commission (E/CN.4/1997/19). The information indicated that the authorities were investigating concerns raised with regard to Rhône Poulenc's operation in Brazil and possible soil contamination. With regard to Total, a French oil company, and the construction of a pipeline in Burma, the government stated that the concerns did not relate to illicit dumping of toxic or dangerous products and wastes and, therefore, were not within the SR's mandate.

**Violence against women, Special Rapporteur on:** (E/CN.4/1998/54, Section III.B)

In commentary on violence against refugee and internally displaced women and the current legal status of persecution on the grounds of gender, the report notes that in France the Commission des recours des réfugiés granted refugee status to a woman who had been raped a number of times by the military and further detained for refusing to return to the military camp for fear of sexual violence. Refugee status was granted because of the woman's fear of persecution.

### **Mechanisms and Reports of the Sub-Commission**

**Systematic rape, sexual slavery and slavery-like practices during armed conflict, Special Rapporteur on:** (E/CN.4/Sub.2/1998/13, para. 83)

The report refers to legal responsibility for individuals, and notes that such responsibility applies to persons who are complicitous in international crimes by carrying out certain acts or functions in the bureaucracy or political process through which slavery, crimes against humanity, genocide, torture and war crimes are made a practical possibility. The Special Rapporteur (SR) notes that these offenders are often civilians, are often outside any given chain of command, their actual knowledge of wrongdoing may be incomplete, and holding them to a standard of reasonable inquiry is appropriate. The SR cited the case of a high-level fonctionnaire in the Vichy Government of France during the Second World War, who was recently convicted by a French court for complicity in crimes against humanity. The defendant was sentenced to 10 years' imprisonment and assessed damages of 4.6 million francs (US\$748,000) for his part in the Holocaust, specifically in administering the paperwork for thousands of Jews deported to concentration camps. The punishment for complicity was not as severe as the punishment would have been for an actual perpetrator; however, the SR noted that his unquestioning performance of questionable acts did in fact contribute to crimes against humanity and he was rightly held liable for complicity.

**Traditional practices affecting the health of women and girls, Special Rapporteur on:** (E/CN.4/Sub.2/1998/11, paras. 105–107)

The report refers to a case in France in which a couple from Mali were found guilty of complicity in the carrying out of an excision operation on their daughter. The couple received a suspended sentence of three and a half years' imprisonment from the Assize Court of Val-de-Marne, at Creteil, outside of Paris.

At another trial held in March 1993 in the Paris area — in which a Malian and his two wives were accused of having had excisions performed on their daughters in 1993 — the Procurator challenged the defendants' plea of isolation, lack of premeditation and ignorance, and asserted that "subduing the sexual desire of females and preserving their virginity are useful for polygamists". The Special Rapporteur (SR) expressed reservations concerning such assertions on the basis that they show arrogance and contempt. The SR recalled that one of the fundamental principles of efforts to combat traditional practices is the need for prudence and tact, if the desired message is to be transmitted successfully without causing hurt or offence.



## **GERMANY**

**Date of admission to UN:** 18 September 1973. (With the unification of West and East Germany in 1990, the Federal Republic of Germany acts in the UN under the designation of Germany, and the date of entry of what was formerly called West Germany.)

### **TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** The core document prepared by the government for use by the treaty bodies (HRI/CORE/1/Add.75) contains demographic and statistical data, information on the social and political systems, the judicial system, and human rights protections. According to the government, the state is based on principles derived from rule of law, including the independence of the judiciary, legal protection in court for anyone whose rights are violated by public authorities, constitutional jurisdiction, legal security and proportionality of means and ends in state acts that encroach on the rights of individuals and impartial execution of state power. The International Covenants on civil, cultural, economic, political and social rights have become an integral part of German law and each international human rights convention is taken into account in the interpretation of Germany's Basic Law (which functions as its Constitution) and ordinary statutes.

The Basic Law includes provisions on: the free development of the personality, life and physical integrity, equal treatment, equality of women and men, religion and con-

science, conscientious objection to military service, expression and opinion, press freedom, assembly and association, political parties, freedom of movement, choice of occupation and place of work, privacy, property, citizenship, asylum, participation in the electoral process, the right to a legal hearing, non-retroactive application of law and protections related to deprivation of liberty. In terms of economic, social and cultural rights the Basic Law contains provisions related to: entrepreneurship, ownership, sale and disposition of property, choice of residence, an adequate standard of living, assistance for those who are ill or unable to work or find work, marriage and family, children, non-discrimination on the basis of sex, parentage, race, language, homeland, religion or political opinions, and labour rights.

In Germany there is no state body for the protection of human rights on the bases that comprehensive judicial protection exists, assistance is provided through a highly developed network of legal professions and special interest groups, and the Basic Law provides for special procedures and institutions such as petition committees. There is, however, a Commissioner for Human Rights Questions in the Ministry of Justice who acts as agent for Germany to the human rights organs of the Council of Europe. The Commissioner also represents Germany at the Commission on Human Rights on those occasions when the CHR addresses issues related to Germany under the 1503 confidential procedure and represents Germany in cases of individual complaint brought before the Human Rights Committee under the Optional Protocol to the ICCPR.

#### **Economic, Social and Cultural Rights**

Signed: 9 October 1968; ratified: 17 December 1973. Germany's third periodic report (E/1994/104/Add.14) was considered at the Committee's November 1998 session; the fourth periodic report is due 30 June 2000.

#### **Civil and Political Rights**

Signed: 9 October 1968; ratified: 17 December 1973. Germany's fifth periodic report is due 3 August 2000. *Reservations and Declarations*: Articles 2 (1), 19, 21 and 22; paragraphs (3) (d) and (5) of article 14; article 15 (1); declaration under article 41.

**Optional Protocol**: Acceded: 25 August 1993.

**Second Optional Protocol**: Signed: 13 February 1990; ratified: 18 August 1992.

#### **Racial Discrimination**

Signed: 10 February 1967; ratified: 16 May 1969. Germany's 15th and 16th periodic reports were due 15 June 1996 and 1998 respectively.

#### **Discrimination against Women**

Signed: 17 July 1980; ratified: 10 July 1985. Germany's second and third periodic reports (CEDAW/C/DEU/2-3) have been submitted as one document which is scheduled for consideration at the Committee's

June 1999 session; the fourth periodic report was due 9 August 1998.

*Reservations and Declarations*: Eleventh preambular paragraph and article 7 (b).

#### **Torture**

Signed: 13 October 1986; ratified: 1 October 1990. Germany's second periodic report (CAT/C/29/Add.2) was considered at the Committee's May 1998 session; the third periodic report is due 30 October 1999. *Reservations and Declarations*: Article 3.

#### **Rights of the Child**

Signed: 26 January 1990; ratified: 6 March 1992. Germany's second periodic report is due 4 April 1999. *Reservations and Declarations*: Article 18 (1); paragraphs (2) (b) (ii) and (v) of article 40; article 38 (2).

### **REPORTS TO TREATY BODIES**

#### **Committee on Economic, Social and Cultural Rights**

Germany's third periodic report (E/1994/104/Add.14, September 1996) was considered by the Committee at its November 1998 session. The report prepared by the government contains information on, *inter alia*: non-discrimination and equality before the law, the Second Federal Equal Treatment Act 1994; federal policy and measures with regard to foreign workers; protection of national minorities; employment and unemployment, women in the labour market, wages and minimum wage, occupational health and safety; trade unions, collective bargaining; social security, pensions, benefits; family, protection of children and young persons, minimum ages; standard of living, social assistance, food and nutrition, housing; health and the health care system; education and the education system; and artistic and cultural life, research and development, patents and copyright.

The Committee's concluding observations and comments (E/C.12/1/Add.29) noted a lack of detail in the government's responses to questions on: unemployment in the new Länder; the number of civil servants and professionals who were dismissed from their posts in East Germany after the unification of Germany; the number of poverty-stricken people and social security recipients; HIV/AIDS victims; exploitation of women, child abuse; and pension plans.

The Committee welcomed new policies aimed at: education and training programmes to assist young people in general, and women in particular, in finding employment, especially those in the new Länder; modernization of the law on nationality to allow for dual nationality; the elaboration of an action plan aimed at working women to ensure equal opportunities; the promulgation of the Gender Equality Act; the creation of school and child-care systems that reflect the needs of modern family life; introduction of bills aimed at eliminating discrimination based on ethnic origin, and prosecuting Germans for

child sexual abuses committed abroad; reform of the pension system; the participation of employees in their companies' productive capital and profits; and reintroduction of protective measures against dismissals as well as the payment of sickness allowances. The Committee noted that, with regard to the federal cultural policy and for liaising with the Länder, cooperation with churches and religious communities will be developed to enhance the dialogue between different religious communities and reduce racial hatred and xenophobia. The government's intention to establish a parliamentary independent Human Rights Commission and to create a "human rights post" within the Foreign Ministry were also noted.

The principal subjects of concern identified by the Committee included, *inter alia*: that unemployment remains high and is twice as high in the East as in the West; the failure to establish a poverty line or threshold and the lack of information on people affected by poverty; the status of asylum seekers, especially with regard to the prolonged processing of their application for refugee status as well as their economic and health rights, pending the final decision; the plight of the Sinti and Roma and their enjoyment of their rights to housing, education and employment; that, with few exceptions, civil servants do not realize their right to strike; violence against women and those who become victims of marriage trafficking, trafficking for prostitution and exploitation; the continued abuse of children and their sexual exploitation; widespread pornography, as it seems to be linked with the exploitation of children and women; rising tuition fees for university education; the alarming number of victims of HIV/AIDS and the lack of statistics on the subject, especially with regard to the most vulnerable groups of people; and the plight of homeless people, whose actual number is still unknown, as well as the plight of squatters in many parts of the country, especially in the new Länder.

The Committee recommended that the government, *inter alia*:

- ♦ give more prominence to the rights recognized in the Covenant whether by legislative or judicial means and/or practices;
- ♦ provide, in the next report, more precise statistics and data regarding the question of unemployment, especially in the new Länder, the number and situation of persons living in poverty and social security recipients;
- ♦ take immediate measures, legislative or otherwise, to address and redress the situation of the different categories of asylum seekers, process expeditiously the applications of asylum seekers and accord health, economic and educational rights to refugees;
- ♦ implement the various educational programmes for youths and other vulnerable groups, especially those intended to create employment and those aimed at improving the level of employment in the East;

- ♦ review pension plans and social security benefits to ensure gender equality and fairness among all eligible beneficiaries in all the Länder;
- ♦ accord to civil servants not involved in essential services the right to strike;
- ♦ take affirmative and effective measures against trafficking in women or their exploitation for whatever purpose;
- ♦ take effective measures to regulate child labour, in compliance with the Covenant and the relevant ILO Conventions; make increased efforts to prevent child abuse, child exploitation and child pornography;
- ♦ provide more adequate assistance to HIV/AIDS victims without any discrimination on the basis of race, origin, nationality or gender;
- ♦ ensure, as an act of national reconciliation, that compensation be provided to civil servants, professionals and scientists associated with the old regime in the former German Democratic Republic and ensure that such compensation is both adequate and fair;
- ♦ avoid increases in university tuition in compliance with article 13 of the Covenant; and
- ♦ accelerate the process of integration between East and West on all fronts with a view to reducing the gap that may still exist between them.

### Committee against Torture

Germany's second periodic report (CAT/C/29/Add.2) covers the period from 9 March 1992 to 17 December 1996 and was considered by the Committee at its May 1998 session. The report prepared by the government contains information on, *inter alia*: constitutional provisions related to the prohibition on torture, remedies and appeals; obligations under the European human rights regime; provision in the Criminal Code relevant to torture and ill treatment; cooperation with the International Tribunals on the former Yugoslavia and Rwanda; police training — conflict avoidance, conflict-solving, contacts with ethnic and social minorities as well as fringe groups, and measures to address xenophobia in the police forces; the training of prison staff; the treatment centre in Bonn for victims of torture; and the voluntary fund for victims of torture. Information is also provided on the Act on Compensation for Victims of Violent Acts — Victim Compensation Act, as amended in July 1993, and the First Act on the Abrogation of Injustice committed by the Socialist Unity Party of Germany (SED), which is primarily intended to abrogate the injustice committed by the criminal justice system in the former German Democratic Republic. Appendix I of the report contains information on accusations of ill treatment by the police. Appendix II provides information on the treatment of aliens in detention awaiting deportation and covers such areas as: the legal bases for deportation and detention awaiting deportation, the duration of detention while awaiting deportation, conditions of detention, and deaths in detention awaiting deportation.

The Committee's concluding observations and comments (CAT/C/GER, May 1998) noted that no cases of torture within the strict meaning of article 1 of the Convention were reported and tainted evidence had not been reported as having been used in any judicial proceedings. The Committee welcomed the establishment of twelve torture rehabilitation centres and the fact that Germany is a contributor to the UN Voluntary Fund for Victims of Torture. Problems arising from the integration and management of large number of refugees and other minorities of non-German descent and attempts to maintain fair and equitable asylum and immigration procedures were noted as impeding the application of the provisions of the Convention.

The subjects of concern identified by the Committee included: failure to integrate the precise definition of torture, as contained in article 1 of the Convention, into the German legal order; the fact that statistical coverage of the incidence of torture, aggravated forms of torture with specific intent (*dolus specialis*) and incidents causing severe mental pain or suffering ("mental torture") are not covered by present legislative provisions; lack of clarity as to the exclusion or not of exculpation by justification and superior order; the large number of reports of police ill treatment, mostly in the context of arrest, from domestic and international non-governmental organizations; the conclusions of the study "The Police and Foreigners", commissioned by the Conference of Ministers of Internal Affairs in 1994 and presented in February 1996, to the effect that police abuse of foreigners is more than "just a few isolated cases"; and the incidents of suicide of persons in detention while awaiting deportation.

The Committee also expressed concern over: the apparently low rate of prosecution and conviction in the alleged incidents of ill treatment by the police, especially of people of foreign descent; the existence of certain open-ended legal provisions permitting under certain circumstances the discretionary but significant reduction of the legal guarantees of those detained by the police, such as provisions permitting the police in certain cases to refuse permission to persons detained at a police station to notify relatives of their arrest; and the fact that references to "the principle of proportionality" — unless with respect to specific and binding decisions of the courts — may lead to arbitrary reductions in such guarantees.

The Committee recommended that the government, *inter alia*:

- ♦ adopt the precise definition of the crime of torture foreseen by the Convention and integrate it into the internal German legal order;
- ♦ envisage the possibility of making the necessary declarations so that Germany is bound by articles 21 and 22 of the Convention (complaints procedures);
- ♦ significantly strengthen both internal disciplinary measures against offending police officers and external prosecutorial and judicial measures to

ensure that in future all police officers accused of ill treatment of domestic and foreign nationals alike are brought to justice;

- ♦ without prejudice to ordinary state procedures and in order to ensure that in cases of alleged ill treatment by police officers such conduct is open to the fullest scrutiny, take steps to open criminal procedures to subsidiary prosecution by the victims of ill treatment;
- ♦ take steps to make adhesion procedures and civil procedures for damages more widely applicable and possible;
- ♦ shorten the length of the investigation of complaints of police ill treatment;
- ♦ give further legislative attention to the need to prevent all evidence obtained directly or indirectly by torture from reaching the cognizance of the deciding judges in all judicial proceedings;
- ♦ provide training in human rights generally and the Convention specifically, on a compulsory basis, to police and immigration officers of all ranks, as well as medical personnel; provide compulsory training to these same officers in the areas of conflict management and ethnic minorities;
- ♦ continue its efforts to ensure that all detainees, at the outset of their custody, are given a form in a language they understand, outlining their rights, including the rights to be informed of the reason for their arrest, to contact a relative and a lawyer of their choice, to submit a complaint about their treatment and to receive medical assistance; and
- ♦ in order to make future judicial proceedings against those suspected of ill treatment possible, require police officers to wear a form of personal identification that would make them identifiable to those who allege ill treatment.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Extrajudicial, summary or arbitrary execution, Special Rapporteur on:** (E/CN.4/1998/68, paras. 16, 17; E/CN.4/1998/68/Add.1, paras. 186–187)

The report refers to a case previously transmitted to the government related to a Nigerian national who reportedly died in August 1994. According to the report, the individual died in the aircraft which was to return him to Nigeria after being injected with a sedative. The government informed the Special Rapporteur (SR) that, as of November 1996, the case was still subjudice. The SR subsequently requested that the government provide further clarification of the case, particularly with regard to the results of the intermediary proceedings against the emergency doctor treating the person, as well as of the main proceedings if applicable.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, para. 107, 109–112)

The report refers to information provided by the government on measures taken or envisaged to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The information included: statistics on racially motivated violence against migrant workers and their families and other socially vulnerable groups; the responsibility of the media (including the Internet) in inciting acts of racially motivated violence; social measures to eliminate all forms of racism; the legal situation in the area of racism and racial discrimination (status of criminal law); and the policy for integrating foreigners and granting compensation for victims of acts of violence.

With regard to the Internet, the Special Rapporteur noted the government's statement that the use of the Internet for purposes of racism and racial discrimination comes under existing law which stipulates that anything which is harmful or even punishable in an "off-line" form must not be assessed or treated differently once it is presented "on-line". Legal and investigative possibilities are restricted, however, mainly because of the anonymous and frequently international dissemination of the information (international networks). The report notes that in late 1996, the Federal Bill Establishing the General Conditions for Information and Communication Services was adopted and entered into force in August 1997. The Bill: describes the basic legal terms for the provision and use of the new information and communication services; outlines the responsibility of the so-called providers; contains amendments to the Penal Code and the Act on Administrative Offences; and extends the Act Concerning the Distribution of Publications Harmful to Young Persons to the new information and communication services.

The government stated that the Bill is based on the principle of freedom of access and reflects the fact that the responsibility of those concerned needs to be regulated, with the providers' responsibility for their own content being governed by general statutes. The government noted that it had, on several occasions, appealed to those responsible to limit the portrayal of violence but added that protections related to freedom of the press, broadcasting, and films stipulate that the state must not interfere with, or exert an influence on, the content of the media. There is also a ban on censorship, so that media content cannot be checked in detail. As a consequence, the government can only appeal to responsible media professionals not to publish any harmful or punishable content and, equally important, not to contribute to the escalation of violence by dramatizing specific events.

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:**

(E/CN.4/1998/101, paras. 20, 102, 116)

The report notes that a new initiative against child abuse, child pornography and sex tourism was developed, combining tougher sentencing with preventive educational schemes. The campaign included, *inter alia*: the use of

educational films, comics and pamphlets for children and parents by the Ministry of Youth; plans to increase the number of telephone hotlines; and increased allocation of funds for training teachers, police officers, lawyers, medical personnel and tour guides to raise awareness of the problems of child sex abuse. The Special Rapporteur (SR) cited estimates that approximately 200,000 German men travel abroad each year to have sex, often seeking young teenage girls, as well as reports that German sex agencies advertise underage Russian girls. The report notes that some German aid money is directed at supporting training for children in countries like Thailand to prevent them from resorting to prostitution.

The narrative on children as viewers of sexually explicit material on the Internet makes reference to the fact that the anonymity which the Internet provides to users is often abused, creating distressing situations for the recipients of unwanted material. The report cites the case of a professor in Munich who was among many recipients of an e-mail in which the anonymous sender publicized that he had a large collection of pictures, videotapes, posters, audio recordings and games based on child pornography for sale. The sender of the message also offered to buy any child pornography which others may have had available. The incident raised several questions, including how the sender located the professor's address, to whom a complaint could be made, and what steps could be taken to ensure that such e-mail was not received again.

Referring to education, and sex education programmes in particular, the SR noted that the Catholic Church cooperates very closely with, and actively supports, NGOs in their campaigns against child prostitution. The SR welcomed the involvement of religious authorities, leaders and groups in the fight against commercial sexual exploitation of children.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, paras. 102–104; E/CN.4/1998/38/Add.1, paras. 137–142)

Allegations continued to be received related to the use of disproportionate or unnecessary force while police officers were trying to restrain or arrest suspects, as well as to ill treatment in police custody. Victims were reported to include mostly foreigners, including asylum seekers, or members of ethnic minorities. Beating, kicking and punching were the most reported forms of ill-treatment. The report notes that criminal investigations were known to have been instituted, but their promptness, thoroughness, and impartiality had been questioned because few officers were prosecuted or sanctioned and, in several cases, compensation had not been accorded.

The cases transmitted to the government included, *inter alia*: on two occasions, ill treatment by the Federal Border Protection Police while attempting to deport a rejected Algerian asylum seeker; ill treatment by plain clothes police officers of a person of Turkish origin during an identity check, noting that a medical examination revealed multiple bruises and abrasions, and a penal

order for violently resisting a police identity check was withdrawn pending investigations into a complaint of police assault; assault by a dozen police officers against a couple of Turkish origin and their son in their home, noting that an investigation into the alleged ill-treatment had been opened, and an investigation into allegations of resisting police authority dropped; ill treatment of a Polish medical doctor by members of the Federal Border Protection Police, noting that investigations into the alleged ill-treatment were dropped; arrest of an individual of Turkish origin by police officers on suspicion of involvement in a fight, followed by ill treatment while in custody, noting that accusations of resisting arrest were dropped and the officers involved charged with assault by negligence.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, paras. 54, 62; E/CN.4/1998/10/Add.1, "Comments received from States")

The report notes that Germany is one of the largest waste exporters among OECD countries with exports of wastes for recycling sent mainly to the Baltic States and Eastern Europe, and secondarily to Latin America and Asia.

The addendum to the main report contains information provided by the government in response to commentary in the Special Rapporteur's report to the 1997 session of the Commission (E/CN.4/1997/19). The government stated, *inter alia*: with regard to the export of expired pesticides to Albania, the shipment had been returned to Germany and disposed of in an environmentally sound manner; with regard to the illegal export of shredded batteries and transformers to Egypt, the ship had been denied entry to the port of Alexandria and the wastes were returned to Germany and disposed of in an environmentally sound manner; and the allegation about illegal exports to India, dating back to 1995, were unfounded because the movement of the products had been approved by both the competent German and Indian authorities, and the recipient had the necessary permit from Indian authorities to process the zinc powder imported from Germany.

**Violence against women, Special Rapporteur on:** (E/CN.4/1998/54, Section III.B)

Concerning persecution on grounds of gender and grounds for requesting asylum, the report notes that the German authorities granted refugee status to a woman who expressed her political opinion and showed her aversion to strict Islamic rules not only through conversation and refusing to join prayers, but by refusing to wear the chador. The court considered the woman's disagreement with the dress regulations and the subordinate role of women to be a political opinion.



## GREECE

**Date of admission to UN:** 25 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Greece has not submitted a core document for use by the treaty bodies.

#### Economic, Social and Cultural Rights

Acceded: 16 May 1985.

Greece's initial report was due 30 June 1990; the second periodic report was due 30 June 1995.

#### Civil and Political Rights

Acceded: 5 May 1997.

Greece's initial report was due 4 August 1998.

**Optional Protocol:** Acceded: 5 May 1997.

**Second Optional Protocol:** Acceded: 5 May 1997.

*Reservations and Declarations:* Article 2.

#### Racial Discrimination

Signed: 7 March 1966; ratified: 18 June 1970.

Greece's 12th periodic report was due 18 July 1993; the 13th periodic report was due 18 July 1995; the 14th periodic report was due 18 July 1997.

#### Discrimination against Women

Signed: 2 March 1982; ratified: 7 June 1983.

Greece second and third periodic reports (CEDAW/C/GRC/2-3) were submitted as one document which is scheduled for examination at the Committee's January 1999 session; the fourth periodic report was due 7 July 1996.

#### Torture

Signed: 4 February 1985; ratified: 6 October 1988.

Greece's third periodic report was due 4 November 1997. *Reservations and Declarations:* Declaration under articles 21 and 22.

#### Rights of the Child

Signed: 26 January 1990; 11 May 1993.

Greece's initial report was due 9 June 1995.

### THEMATIC REPORTS

#### Mechanisms of the Commission on Human Rights

**Disappearances, Working Group on enforced or involuntary:** (E/CN.4/1998/43, paras. 180–182)

No new cases of disappearance were transmitted to the government. Two of the outstanding cases sent in 1993 concern Albanian cousins who were reportedly taken by the police in Zagora. The third case concerns a Swiss citizen who was reportedly travelling from Greece to Italy in

1995 on a Greek ship and, when denied entry into Italy, returned to Greece on the same ship.

Information provided by the government indicated that: with regard to the Albanians, on the night of their disappearance, they were at a hostel together with other illegal immigrants, and an investigation was continuing; in connection with the Swiss citizen, the person had twice been denied entry into Greece and was expelled from the country on several occasions for involvement in international criminal activity. The government stated that there was no record of the person, and no official exit from the ship returning him to Greece. He may have gone ashore before a passenger disembarkation control took place, but an investigation was continuing.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, para. 46)

The report notes that in October 1996 police officers entered a Roma camp at Ano Liosia in Attica to arrest a 21-year-old man suspected of stealing cannabis. Information indicated violence broke out, in response to the police treatment of the suspect's mother and sister, and the police reacted with a second incursion. The Minister of the Interior was reported to have said that "the police had been doing their job and that people should not believe what Gypsies said".

**Religious intolerance, Special Rapporteur on:** (E/CN.4/1998/6, paras. 29, 48, 50, 64, 69, 78, 94, 95, 121-163)

The report refers to violations of freedom of religion and belief against Islam. Responding to a case related to the construction of a mosque, the government stated that work on the mosque had been suspended because elements in the design had not been included in the approved construction licence. The law was enforced to stop arbitrary construction work. The government stated that an application could be made for a new revised licence, which would be issued, but no application for such a revised construction licence had been submitted by those interested in continuing the building.

The Special Rapporteur (SR) visited Greece in June 1995 and has monitored the government's follow-up to that visit. The government provided a detailed response to the SR's assessment in which reference is made to, *inter alia*: constitutional protections related to freedom of religion and belief; measures to ensure that members of law enforcement bodies, civil servants, educators and other public officials, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief; guarantees of non-discrimination with regard to employment and education; conscientious objection and alternative service; establishment, construction, and safeguarding of places of worship for "non-orthodox known Christian religions"; and state support for the religious training of Muslims and the situation of Muslims in Thrace.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, para. 105; E/CN.4/1998/38/Add.1, para. 143)

The Special Rapporteur transmitted information to the government related to two Iranians, one of whom was a German resident who was visiting a friend. Both were reportedly stopped in a park in Athens. Information indicated that the two were grabbed by seven or eight police officers and beaten on the way to, and at, the police station. One of the men was hospitalized with a broken kneecap. The government replied that the man was thought to have been injured while attempting to flee and not as a result of police actions.



## HOLY SEE

**Date of admission to UN:** The Holy See is a non-Member State with observer status.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** The Holy See has not submitted a core document for use by the treaty bodies.

**Racial Discrimination**

Signed: 21 November 1966; ratified: 1 May 1969.  
The Holy See's 13th through 15th periodic reports were due 31 May 1994, 1996 and 1998 respectively.

**Rights of the Child**

Signed and ratified: 20 April 1990.  
The Holy See's second periodic report was due 1 September 1997.  
*Reservations and Declarations:* Ninth preambular paragraph; paragraph 2 (f) of article 24; articles 13 and 28.



## ICELAND

**Date of admission to UN:** 19 November 1946.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Iceland has submitted a core document (HRI/CORE/1/Add.26) for use by the treaty bodies. The report prepared by the government includes demographic data and information on the economy, the constitutional structure and government, and remedies with respect to human rights violations.

Through the courts, any individual claiming a violation of human rights make seek compensatory damages, annulment of libelous or slanderous statements, compensation for non-financial loss and/or invalidation of administrative decisions if those decision have violated rights. There is no separate constitutional court to resolve disputes related to alleged violations of constitutionally protected human rights. The Ombudsman of the Althing is elected by parliament to which an annual report is submitted. The office functions independently, however, and has responsibility to secure the rights of citizens vis-à-vis the administrative authorities. Investigations may be undertaken on receipt of a complaint or on independent initiative. The opinions of the Ombudsman are not binding on administrative authorities but, in general, the authorities act on the opinions offered.

### **Economic, Social and Cultural Rights**

Signed: 30 December 1968; ratified: 22 August 1979. Iceland's second periodic report (E/1990/C/Add.15) has been submitted and is scheduled for consideration by the Committee at its April/May 1999 session; the third periodic report is due 30 June 2001.

### **Civil and Political Rights**

Signed: 30 December 1968; ratified: 22 August 1979. Iceland's third periodic report (CCPR/C/94/Add.2) was considered at the Committee's October 1998 session; the fourth periodic report is due in October 2003. *Reservations and Declarations:* Paragraphs 2 (b) and 3 of article 10; paragraph 7 of article 14; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Acceded: 22 August 1979. *Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 30 January 1991; ratified: 2 April 1991.

### **Racial Discrimination**

Signed: 14 November 1966; ratified: 13 March 1967. Iceland's 15th periodic report was due 4 January 1998.

### **Discrimination against Women**

Signed: 24 July 1980; ratified: 18 June 1985. Iceland's third and fourth periodic reports were submitted as one document (CEDAW/C/ICE/3-4) which is not yet scheduled for consideration by the Committee; the fifth periodic report is due 18 July 2002.

### **Torture**

Signed: 4 February 1985; ratified: 23 October 1996. Iceland's initial report (CAT/C/37/Add.2) was considered at the Committee's November 1998 session; the second periodic report is due 22 November 2001.

### **Rights of the Child**

Signed: 26 January 1990; ratified: 28 October 1992. Iceland's second periodic report is due 26 November 1999.

## **REPORTS TO TREATY BODIES**

### **Human Rights Committee**

Iceland's third periodic report (CCPR/C/94/Add.2, March 1995) was considered by the Committee at its October 1998 session. The report prepared by the government focusses on new legislative and other measures since consideration of Iceland's 2nd periodic report in 1994. Among the legislation and other measures cited are: the Act on Administrative Procedure, January 1994; the Foreign Nationals Supervision Act, the establishment of the office of the Ombudsman for Children; and revisions to the human rights provisions in the Constitution. In terms of individual articles of the Covenant, the report contains information on, *inter alia*: prohibition of discrimination; the right to a remedy; the role and functions of the Ombudsman of the Althing (Parliament); equality between women and men, the Equal Status Complaints Committee and Act No. 28/1991 on the Equal Status of Men and Women; provisions in the General Penal Code, the death penalty; prohibition of torture and ill treatment; the 1994 Act on Community Services; provisions in the Code of Criminal Procedure, the treatment and accommodation of prisoners; provisions related to access to the courts and the functioning of the judiciary; the freedoms of religion, expression, assembly and association; the rights and protection of children, juvenile justice; the Marriage Act 1993, the rights and duties of spouses and parents; measures and considerations related to sexual orientation; the right to vote and be elected; equality under the law; and the rights of minorities.

The Committee's concluding observations and comments (CCPR/C/79/Add.98) welcomed, *inter alia*: the amendment to human rights provisions in the Constitution, including strengthening the indivisibility of civil, cultural, economic, political and social rights; new legislative measures; and the establishment of the Office of the Ombudsman for Children.

The principal subjects of concern identified by the Committee were the persistence of certain areas of inequality between women and men and the persistence, in law and practice, of discrimination against children born out of wedlock.

The Committee recommended that the government, *inter alia*:

- ♦ ensure that all rights protected under the Covenant are given effect in domestic law; withdraw the remaining reservations to the Covenant;
- ♦ intensify efforts to achieve full equality between women and men, including in the employment sector;
- ♦ provide in the next report further information on measures taken to combat all forms of violence against women; and
- ♦ take steps to eliminate discrimination against children born out of wedlock.

The Committee decided that Iceland's 4th periodic report would be due in October 2003.

### Committee against Torture

Iceland's initial report (CAT/C/37/Add.2, February 1998) was considered by the Committee at its November 1998 session. Since this is Iceland's first report under the Convention, a large part of the report is concerned with describing law in substance and individual statutory provisions. The report contains information on, *inter alia*: constitutional law and practice; the role and functions of the National Commissioner of Police and the Director of Public Prosecutions; the Ombudsman of the Althing (Parliament), established in 1988; human rights provisions in the Constitution; laws on prohibition of torture; jurisdiction over matters dealt with in the Convention; prisons and imprisonment; the General Penal Code (GPC); extradition, immigration, supervision of foreigners; the definition of acts constituting torture; police powers and the rights of persons arrested or detained; the Code of Criminal Procedure and the Regulations on Imprisonment on Remand; provisions related to the right to due process; police training and the training of prison officials; human rights training for judges; the Legal Competency Act; provisions and measures related to interrogation procedures; complaint, remedy and compensation; rules of evidence; and misuse of public authority.

The Committee's concluding observations and comments (CAT/C/ICE) welcomed, *inter alia*: the 1995 amendments to the Constitution to enhance protection of human rights and establish the absolute prohibition of torture; and the enactment of legislation and rules on the rights of arrested persons, interrogations by the police, and the protection of persons committed to psychiatric hospitals against their will.

The subjects of concern identified by the Committee were that torture is not considered a specific crime in penal legislation and the use of solitary confinement, particularly as a preventive measure during pre-trial detention.

The Committee recommended that the government, *inter alia*:

- ♦ include torture as a specific crime in penal legislation;
- ♦ review the provisions regulating solitary confinement during pre-trial detention in order to reduce considerably the cases to which solitary confinement could be applicable;
- ♦ bring into line with the provisions of article 15 of the Convention legislation concerning evidence to be adduced in judicial proceedings so as to explicitly exclude any evidence made as a result of torture; and
- ♦ include in the next report information on constraining measures applied in psychiatric hospitals.



## IRELAND

Date of admission to UN: 14 December 1955.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Ireland has submitted a revised core document (HRI/CORE/1/Add.15/Rev.1) for use by the treaty bodies. The report prepared by the government contains information on the political, legal and administrative system, the general legal framework within which human rights are protected, and promotion of economic, social and cultural rights from the perspective of international development assistance. The 1937 Constitution establishes the essential rules governing the most important institutions of state and the relationship between these institutions. It also contains a comprehensive code for the protection of human rights. International agreements ratified by Ireland are not self-executing and the provisions of the International Covenants on Human Rights cannot be invoked before, or directly enforced by, the Courts. Articles 40 through 44 of the Constitution outline a number of rights including, *inter alia*: equality before the law; the right to life and security of person; property rights; freedom of expression, assembly and association; family rights; freedom of conscience and the free profession and practice of religion; the right to vote and be elected; the right to have justice administered in public by judges who are independent and rights related to due process. Judicial review and remedy are available to any person claiming a violation of rights. The document refers to case law and court rulings in a number of instances to illustrate the protection of rights afforded under the legal system.

#### Economic, Social and Cultural Rights

Signed: 1 October 1973; ratified: 8 December 1989.

Ireland's initial report (E/1990/5/Add.34) has been submitted and is scheduled for consideration at the Committee's April/May 1999 session; the second periodic report was due 29 June 1997.

*Reservations and Declarations:* Paragraph 2 of article 2; paragraph 2 (a) of article 13.

#### Civil and Political Rights

Signed: 1 October 1973; ratified: 8 December 1989.

Ireland's second periodic report was due 7 March 1996.

*Reservations and Declarations:* Paragraph 2 of article 10; paragraph 2 of article 19; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Acceded: 8 December 1989.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Acceded: 18 June 1993.

#### Racial Discrimination

Signed: 21 March 1968.

**Discrimination against Women**

Acceded: 23 December 1985.

Ireland's second and third periodic reports were submitted as one document (CEDAW/C/IRL/2-3) which is scheduled for consideration at the Committee's June 1999 session; the fourth periodic report is due 22 January 2003.

*Reservations and Declarations:* Paragraphs (b) and (c) of article 13; paragraph 3 of article 15; paragraph 1 (d) and (f) of article 16; paragraphs 1 (b), (c) and (d) of article 11; paragraph (a) of article 13.

**Torture**

Signed: 28 September 1992.

**Rights of the Child**

Signed: 30 September 1990; ratified: 28 September 1992. Ireland's initial report (CRC/C/11/Add.12) was considered at the Committee's January 1998 session; the second periodic report is due 27 October 1999.

*Reservations and declaration:* General declaration on signature.

**REPORTS TO TREATY BODIES****Committee on the Rights of the Child**

Ireland's initial report (CRC/C/11/Add.12, April 1996) was considered by the Committee at its January 1998 session. The report prepared by the government contains information on, *inter alia*: the Child Care Act 1991; the National Anti-Poverty Strategy (NAPS) and the Commission on the Family; the definition of the child and minimum ages; the Status of Children Act 1987; the right to life of the unborn and laws related to abortion; the Criminal Evidence Act 1992; name and nationality and preservation of identity; access to appropriate information; the Judicial Separation and Family Law Reform Act 1989; alternative care and supervision orders; the Family Law Maintenance of Spouses and Children Act, as amended in 1981; the Kilkenny report and measures to address child abuse and treatment for victims of abuse; the Domestic Violence and Sexual Assault Investigation Unit, established in 1993; the "Stay Safe" Child Abuse Prevention Programme; the Domestic Violence Bill 1995; children with disabilities; education and schools; health and health services; drug, alcohol and substance abuse and treatment; social security and child welfare; the juvenile justice system; the Travelling Community and the report of the Task Force on the Travelling Community; and key concerns raised by NGOs in consultations with the government prior to preparation of the report.

The Committee's concluding observations and comments (CRC/C/15/Add.85) welcomed, *inter alia*: the welfare services established for the benefit of children and their families; the high level of education and advanced health system; efforts aimed at law reform, for example, enactment of the Child Care Act of 1991 and its amended version of 1997, the Family Law Act of 1995, the Domestic Violence Act of 1996, the Family Law (Divorce) Act of 1996, and the drafting of the Education and Adoption

Bills; the numerous efforts and concrete measures taken to protect children from sexual exploitation, including sex tourism; and the enactment of the Sexual Offences (Jurisdiction) Act of 1996 and the drafting of the Child Trafficking and Pornography Bill of 1997.

The principal subjects of concern identified by the Committee included: the lack of a comprehensive national policy on the rights of the child that fully incorporates the principles and provisions of the Convention; the fact that welfare policies and practices do not adequately reflect the child rights based approach set out in the Convention, and the insufficient emphasis given to preventive measures; the lack of an independent monitoring mechanism such as an Ombudsperson or a Child Rights Commissioner, accessible to children for dealing with complaints of violations of their rights and providing remedies for such violations; the fact that in some instances statistics on the situation of children are being collected for children up to the age of 15 only; the lack of adequate and systematic training, on the principles and provisions of the Convention, for professional groups working with and for children; and the fact that the potential of the non-governmental sector in contributing to the development of children rights' policy is not fully realized.

In terms of the definition of the child, the Committee expressed concern over the various low age limits set in domestic legislation. With respect to the principle of non-discrimination, concern was expressed over the disparities in access to education and health services and the difficulties still faced by children from vulnerable and disadvantaged groups, including children belonging to the Traveller community, children from poor families, and refugee children, as to the enjoyment of fundamental rights, including access to education, housing and health services.

The Committee also expressed concern over: the fact that the views of the child are not generally taken into account, including within the family, at schools, and in society; the lack of prohibition in legislation of corporal punishment within the family environment; the existence of child abuse and violence within the family, and the lack of mandatory reporting mechanisms for cases of child abuse; the disadvantaged situation of children born from unmarried parents due to the lack of appropriate procedures to include the identity of the father in the birth registration of the child; the lack of guarantees for the child to maintain contact with both parents after divorce; the low rate of breastfeeding and the lack of awareness about the positive impact of this practice on children's health; the incidence of teenage suicide and the lack of adequate programmes addressing adolescent health related problems, such as drug and alcohol abuse and early pregnancies; the lack of a national policy to ensure the rights of children with disabilities, and the lack of adequate programmes and services addressing the mental health of children and their families.

The Committee acknowledged the National Anti-Poverty Strategy but was particularly concerned about the incidence of child poverty and homeless children. Concern

by the Committee was further expressed over: the situation of children who are excluded from schools because of sanctions imposed by teachers and the adverse effect generated which may sometimes have an impact on drop-out rates and school attendance; and, the low age for criminal responsibility, and the treatment of children deprived of their liberty.

The Committee recommended that the government, *inter alia*:

- ♦ take all appropriate measures to accelerate the implementation of the recommendations of the Constitutional Review Group for the inclusion of all the principles and provisions of the Convention and the implementation of the Child Care Act of 1997; take further steps to ensure that the Convention is fully incorporated as part of domestic law;
- ♦ consider ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993;
- ♦ take immediate steps to improve the situation of child poverty, and make all possible efforts to ensure that all families have adequate resources and facilities;
- ♦ use the principles and provisions of the Convention as a framework for its programmes of international development assistance;
- ♦ adopt a comprehensive National Strategy for Children, incorporating the principles and provisions of the Convention, in a systematic manner, in the designing of all its policies and programmes;
- ♦ positively reconsider the establishment of an independent monitoring body, such as an Ombudsperson or a child rights commissioner, to address children's rights violations adequately;
- ♦ strengthen coordination among different government bodies dealing with children's rights; concentrate in a single body the mandate to coordinate and make the appropriate decisions to protect the rights of the child;
- ♦ adjust the system of data collection and development of indicators to include all children up to the age of 18, and ensure that the system includes all children, with specific emphasis on vulnerable children and children in especially difficult circumstances;
- ♦ continue and strengthen its efforts to develop a closer relationship with NGOs;
- ♦ promote human rights education in the country and create a wider awareness and understanding of the principles and provisions of the Convention; incorporate children's rights in the curricula of all educational and pedagogical institutions; conduct comprehensive training programmes on the Convention for professional groups working with and for children;

- ♦ take appropriate measures for establishing, as much as possible, procedures for the inclusion of the name of the father in the birth certificates of children born from unmarried parents;
- ♦ develop programmes to facilitate active participation of children with disabilities in the community; pursue further efforts to ensure the implementation of integrated mental health programmes and approaches and make available the necessary resources and assistance for these activities;
- ♦ take all appropriate measures, including of a legislative nature, to prohibit and eliminate the use of corporal punishment within the family environment; conduct awareness-raising campaigns to ensure that alternative forms of discipline are administered in a manner consistent with the child's dignity and in conformity with the Convention;
- ♦ ensure proper investigation of cases of abuse and ill treatment of children, including sexual abuse within the family, the application of sanctions against perpetrators and that publicity is given to decisions taken, with due regard to the principle of respect for the child's privacy; and
- ♦ take all available measures to ensure the prompt enactment of the Children Bill of 1996, especially in relation to the administration of the juvenile justice system.



## ITALY

**Date of admission to UN:** 14 December 1955.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Italy has not submitted a core document for use by the treaty bodies.

#### Economic, Social and Cultural Rights

Signed: 18 January 1967; ratified: 15 September 1978. Italy's third periodic report (E/1994/104/Add.19) has been submitted and is pending for consideration at the Committee's April 2000 session; the fourth periodic report is due 30 June 2001.

#### Civil and Political Rights

Signed: 18 January 1967; ratified: 15 September 1978. Italy's fourth periodic report (CCPR/C/103/Add.4) was considered at the Committee's July 1998 session; the fifth periodic report is due 1 November 2000.

*Reservations and Declarations:* Paragraph 5 of article 9; paragraph 4 of article 12; paragraphs 3 and 5 of article 14; paragraph 1 of article 15; paragraph 3 of article 19; declaration under article 41.

**Optional Protocol:** Signed 30 April 1976; ratified: 15 September 1978.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 13 February 1990; ratified 14 February 1995.

### **Racial Discrimination**

Signed: 13 March 1968; ratified: 5 January 1976.

Italy's 10th and 11th periodic reports were submitted as one document (CERD/C/317/Add.1) which is pending for consideration at the Committee's March 1999 session; the 12th periodic report is due 4 February 1999.

*Reservations and Declarations:* Paragraphs (a) and (b) of article 4; article 6.

### **Discrimination against Women**

Signed: 17 July 1980; ratified: 10 June 1985.

Italy's third and fourth periodic reports were due 10 July 1994 and 1998 respectively.

*Reservations and Declarations:* General reservation on signature.

### **Torture**

Signed: 4 February 1985; ratified: 12 January 1989.

Italy's third periodic report (CAT/C/44/Add.2) has been submitted and is yet scheduled for consideration at the Committee's May 1999 session; the fourth periodic report is due 10 February 2002.

*Reservations and Declarations:* Declarations under articles 21 and 22.

### **Rights of the Child**

Signed: 26 January 1990; ratified: 5 September 1991.

Italy's second periodic report was due 4 October 1998.

## **REPORTS TO TREATY BODIES**

### **Human Rights Committee**

Italy's 4th periodic report (CCPR/C/103/Add.4, October 1996) was considered by the Committee at its July 1998 session. The report prepared by the government covers the period to June 1996 and contains examples of case law of the Constitutional Court as well as information on, *inter alia*: law reform in a number of areas addressed by the Covenant; the establishment of the Ministry for Equal Opportunities, concerned with equal rights for women and men; abolition of the death penalty and extradition considerations; legislation and case law related to torture and ill treatment; amendments to the Code of Criminal Procedure; measures to prevent violence at sports competitions; the situation of, and conditions in, prisons, measures related to the treatment of prisoners (including those with HIV), the training of Prison Service police, detention facilities and prisons for juvenile offenders; non-EEC and illegal aliens, entry and residence, assistance for aliens, deportation procedures (including those in preventive detention); the new Code of Civil Practice; reforms in the administration of justice, including a reorganization of the courts; the nature and trial function of the Pubblico Ministero (State Attorney

or Public Prosecutor); the National Anti-Mafia Directorate; reforms transforming minor crimes such as reporting accidents to administrative wrongs; computer crime and data protection; religious freedom and the proposed National Observatory on Religious Freedom; provisions in law related to mercenaries and ratification of the Convention on the use of mercenaries; measures to combat racial, ethnic and religious discrimination; the protection of children, prevention of drug dependency, protection of child workers; and case law of the Constitutional Court regarding the rights of minorities.

The Committee's concluding observations and comments (CCPR/C/79/Add.94) welcomed: Italy's ratification of the Second Optional Protocol to the Covenant, and the Constitutional Court decision in 1996 declaring unconstitutional the law ratifying a treaty of extradition on the grounds that there was no absolute guarantee in law that the person concerned would not be executed; the action taken to reduce the length of a nominal life sentence to a maximum finite sentence; the fact that the judiciary has begun to treat offences concerning trafficking of women and others for the purpose of prostitution as acts which can be assimilated to slavery and contrary to international and national law; the institution of the Ministry of Equal Opportunities and the 1997 plan to implement the results of the Fourth World Conference on Women; changes in legislation concerning controls applied to illegal immigrants, which improve their rights while awaiting a decision on admission and the possibility of family reunion in the case of admission; adoption of legislation to regulate the collection and use of personal computerized data along with another measure subjecting wire-tapping to strict control; the establishment of the National Observatory on Religious Freedom and the fact that its activities include dealing with complaints about constraints on this freedom; and new laws regulating the extent of control of mass information media, addressing the Committee's previous concerns about the excessive concentration of power of the mass information media by a small group of people.

The principal subjects of concern identified by the Committee included, *inter alia*: that Italy had still not withdrawn any of its reservations to the Covenant; continuing structural and cultural problems preventing the full realization by women of equal opportunities in public and political life and in employment and the fact that equal pay is often not given for work of equal value; the inadequacy of sanctions against police and prison officers who abuse their powers; continuing serious overcrowding in prisons; and increased incidents of racial intolerance. The Committee also expressed concern over continuing delays with respect to passing legislation concerning: the introduction into the Criminal Code of the offence of torture as defined in international law; the provision of both criminal and civil sanctions against those who perpetrate domestic violence; and the introduction of measures giving effect to further improvement of the rights of persons belonging to ethnic, religious and linguistic minorities and for the protection of the rights of the Slovenian minority.

The Committee recommended that the government, *inter alia*:

- ♦ reconsider the reservations entered to the Covenant with the object of determining whether their continuance is necessary;
- ♦ take urgent steps — by way of education, encouragement and legal means — to reduce or eliminate inequalities in rights for women and men and include in the next report statistical data and other information on the *de facto* situation of women;
- ♦ maintain due vigilance over the outcome of complaints made against members of the carabinieri and against prison officers;
- ♦ reduce the maximum period during which a person may be held in custody following arrest on a criminal charge, even in exceptional circumstances, to less than the present five days and ensure that the arrested person is entitled to access to legal advice immediately upon arrest;
- ♦ with regard to preventive detention before and after trial, discontinue the linkage between the offence with which a person has been charged and the length of detention from the time of arrest up to final sentence; restrict the grounds for preventive detention to those cases in which such detention is essential to protect legitimate interests, such as the appearance of the accused at the trial;
- ♦ pay urgent attention to correcting the problem of prison overcrowding;
- ♦ take further measures to expedite both criminal and civil trials, and improve the efficiency and promptness of the entire system of justice; and
- ♦ continue to take all measures by way of, for example, legal constraint and education to eradicate racial intolerance.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### **Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, paras. 34, 60–63)

The report refers to an incident in which insults were reportedly uttered against two black Brazilian international footballers. The Special Rapporteur also referred to two other cases in which, according to information received, a Ghanaian citizen was allegedly beaten by police officers at Leonardo da Vinci International Airport at Fiumicino while in transit between Denmark and Ghana, and a woman of Italian nationality but Nigerian origin was allegedly physically assaulted in a xenophobic manner by police officers. The woman claimed that when she stated she was an Italian citizen, she was told that “a black woman cannot be an Italian citizen”.

In the reply to the allegation of police brutality against the Ghanaian, the government stated that inquiries failed to confirm that a beating had taken place and, further, that the photograph of the incident, upon which the allegation was partly based, had not been taken at the airport and bears neither the name of a witness nor the address of the person who took it. The government decided that the complainant had been beaten in his own country in January 1997 and, as a result, received medical care in February 1997. With regard to the second complaint, the government stated that the case, between the plaintiff and the police officers whom she resisted when they tried to arrest her, was being heard.

#### **Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/1998/101, paras. 21, 22)

The report notes that there is a new law in Italy which classifies the sexual exploitation of children as slavery, imposing a 12-year prison sentence on the offenders. Parliament has discussed a new bill to increase sentences for sexual exploitation of children or the organization of sex tourism, which shall apply to Italians exploiting children abroad. The bill known as the “Promotion of the Rights and Opportunities for Childhood and Adolescence Bill”, would also create harsh sentences for people producing and/or disseminating material using children through the Internet. The government intends to provide psychological help for the children suffering abuse, as well as their perpetrators.

The Special Rapporteur’s (SR) interim report to the 1998 General Assembly (A/53/311, paras. 24, 87) refers to a case involving the sexual abuse and murder of a small boy near Naples in 1997, and notes that in November 1998 police arrested three men in connection with the crime. The SR stated that the murder highlighted the urgent need for action, both nationally and internationally, to combat highly organized child pornography rings and access to paedophile material on the Internet.

The SR noted that, in an effort to combat trafficking in women and children, Italy and the U.S. recently established a Working Group on Trafficking in Women and Children. At the Group’s first meeting in Rome in April 1998, certain joint actions were agreed, including: the exchange of best practices with respect to assistance, protection and social integration of victims; implementation of common initiatives, including joint programme strategies for victim outreach, separately in Italy and the U.S. which should provide for the protection of victims’ families in source countries; training for law enforcement, immigration and border officials in source countries to help them to identify patterns and methods of trafficking and prevent trafficking through effective investigation and prosecution; and the development of witness protection procedures and victim services in source countries for cases of repatriation, including training for law enforcement officials and assistance to NGOs that provide victim services.



## LIECHTENSTEIN

**Date of admission to UN:** 18 September 1990.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Liechtenstein has not submitted a core document for use by the treaty bodies.

#### Discrimination against Women

Acceded: 22 December 1995.

Liechtenstein's initial report (CEDAW/C/LIE/1) has been submitted but is not yet scheduled for consideration by the Committee.

*Reservations and Declarations:* Article 1.

#### Torture

Signed: 27 June 1985; ratified: 2 November 1990.

Liechtenstein's second periodic report has been submitted (CAT/C/29/Add.5) and is scheduled for consideration at the Committee's May 1999 session.

*Reservations and Declarations:* Declaration under articles 21 and 22.

#### Rights of the Child

Signed: 30 September 1990; ratified: 22 December 1995. Liechtenstein's initial report (CRC/C/61/Add.1) has been submitted and is pending for the Committee's May/June 2001 session; the second periodic report is due 20 January 2003.

*Reservations and Declarations:* Articles 1, 7 and 10.



## LUXEMBOURG

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Luxembourg has submitted a revised core document (HRI/CORE/1/Add.10/Rev.1) for use by the treaty bodies. The report prepared by the government contains historical background, a description of the general political structure, economic and social policies and related statistics, the national culture, and the general legal framework within which human rights are protected.

The Constitution guarantees 15 rights to all citizens and, in principle, to all aliens residing on the territory of the Grand Duchy. These rights include: equality before the law; the inviolability of the home and property; freedom of opinion and the press; right of petition; freedom of worship, assembly and association; the right to public

education; the right to institute proceedings against public officials; the right to employment and social security; and freedom of trade and industry. International instruments are self-executing and do not require implementing regulations, unless their terms expressly state the contrary. These instruments directly invoke rights and obligations for the subjects of national sovereignty and may, without any other action, be implemented by national administrative and law courts. Disregard of them by a national court is grounds for appeal. International law takes precedence over national law.

#### Economic, Social and Cultural Rights

Signed: 26 November 1974; ratified: 18 August 1983.

Luxembourg's third periodic report was due 30 June 1998.

#### Civil and Political Rights

Signed: 26 November 1974; ratified: 18 August 1983.

Luxembourg's third periodic report was due 17 November 1994.

*Reservations and Declarations:* Paragraph 3 of article 10; paragraphs 3 and 5 of article 14; paragraph 2 of article 19; article 20; declaration under article 41.

**Optional Protocol:** Acceded: 18 August 1983.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 13 February 1990; ratified: 12 February 1992.

#### Racial Discrimination

Signed: 12 December 1967; ratified: 1 May 1978.

Luxembourg's 10th periodic report was due 31 May 1997.

#### Discrimination against Women

Signed: 17 July 1980; ratified: 2 February 1989.

Luxembourg's third periodic report (CEDAW/C/LUX/3; CEDAW/C/LUX/3/Add.1) has been submitted but is not yet scheduled for consideration by the Committee.

*Reservations and Declarations:* Article 7; paragraph 1 (g) of article 16.

#### Torture

Signed: 22 February 1985; ratified: 29 September 1987.

Luxembourg's second periodic report has been submitted (CAT/C/17/Add.20) and is scheduled for consideration at the Committee's May 1999 session; third periodic reports was due 28 October 1992 and 1996 respectively.

*Reservations and Declarations:* Declarations under articles 21 and 22.

#### Rights of the Child

Signed: 21 March 1990; ratified: 7 March 1994.

Luxembourg's second periodic report (CAT/C/17/Add.20) was considered at the Committee's June 1998 session; the third periodic report is due 5 April 2006.

*Reservations and Declarations:* Articles 3, 6, 7 and 15.

## REPORTS TO TREATY BODIES

### Committee on the Rights of the Child

Luxembourg's initial report (CRC/C/41/Add.2, July 1996; CRC/C/Q/LUX/1) was considered by the Committee at its June 1998 session. The report prepared by the government is exhaustive, and reviews historical developments as they relate to the protection of children. Contemporary information is provided on, *inter alia*: the Protection of Young People Act 1992; amendments to the Civil Code corresponding to provisions of the Convention; the Working Group on Promotion of the Rights of the Child; the establishment of a Children and Family Section in the Ministry of the Family in 1995; the function and role of the Luxembourg Committee on the Rights of the Child, and measures related to the social protection of children; the definition of the child and minimum age levels; non-discrimination provisions in the Civil and Criminal Codes; measures to protect the best interests of the child; name and nationality; freedom of expression, access to appropriate information, the Supervision of Public Cinema Theatres and Cinema Performances Act 1922. The report also contains information on: protection of privacy; principles and measures related to social security and social assistance, and the implications for children, the Poverty Act 1986, the National Solidarity Fund; family environment and alternative care, guardianship arrangements; measures related to children deprived of a family environment; protection against mistreatment — for example, abuse, neglect, abandonment, prostitution, corruption, hotline services for children; measures and programmes related to children with disabilities; basic health and welfare; education, access to education, the education system; the administration of juvenile justice and children in conflict with the law; special protection measures; and sexual exploitation and abuse.

The Committee's concluding observations and comments (CRC/C/15/Add.92) welcomed the existence of the Youth Parliament and its involvement in discussions regarding the proposed law to establish a committee functioning as an Ombudsperson.

The principal subjects of concern identified by the Committee included, *inter alia*: the need for amendments to domestic legislation and enactment of new laws to implement fully the principles and provisions of the Convention, as well as the slow pace for the adoption of proposed appropriate amendments; the failure to adopt a comprehensive policy to promote and protect children's rights; the absence of a strong coordination and monitoring mechanism; the failure to formalize the project to establish a Luxembourg Committee on Children's Rights as an independent monitoring mechanism; that insufficient measures have been taken to provide adequate training on children's rights to all professional groups working with and for children; the absence of a law which fully covers all the grounds related to non-discrimination; that children born out of wedlock may still suffer different forms of discrimination and stigmatization, particularly from the use of the terms "legitimate" and "illegitimate"

in the Civil Code; and that the right of children to know their parents are denied to children born anonymously ("under x"), even if this right is proven to be in their best interests.

The Committee expressed concern over: the lack of legislation to protect children from exposure to violence and pornography through video movies and other modern technologies, most prominently the Internet; the fact that possession of pornographic material, including that involving children, is not an offence; failure specifically to prohibit by law the use of corporal punishment within and outside the family; the fact that legislation does not cover all existing forms of placement, and regular and independent monitoring and periodic review of placement are not systematically undertaken; the placement of children in care institutions in neighbouring countries due to lack of facilities and trained professionals in the country; the apparent failure to ensure that intercountry adoption does not result in improper financial gain for those involved in it; provisions in the Penal Code restricting its protection from all forms of abuse and neglect to children under 14 years of age; the unclear status of implementation of the 1994 law on school inclusion for children with disabilities; the noticeable reduction in the rate of breast-feeding following the first month of birth; the short maternity leave period and failure to implement fully the International Code for Marketing of Breast Milk Substitutes; the rate of suicides among young people and that suicides have occurred among young people when in detention; the increase of drug and alcohol abuse among youth; the insufficient measures taken to introduce human rights education, including the rights of the child, into the school curricula in a systematic manner; the existence of child prostitution and the involvement of children in international prostitution networks; the fact that it is not illegal for children above 16 to get involved in prostitution; and, with regard to the administration of juvenile justice, the fact that children aged between 16 and 18 may be referred to ordinary courts and judged as adults, juveniles may be detained with adults in ordinary prisons, the virtual absence of educational opportunities, and long periods of isolation in cells.

The Committee recommended that the government, *inter alia*:

- ♦ take all necessary measures, on a priority basis, to ensure that domestic legislation is in full conformity with the provisions and principles of the Convention;
- ♦ adopt a comprehensive strategy for children; envisage the establishment of a permanent mechanism of coordination, evaluation, monitoring and follow-up for policies aimed at the protection of the child; continue efforts to establish an independent monitoring body, such as an Ombudsperson;
- ♦ continue to disseminate the Convention in appropriate languages to adults and children alike and continue awareness-raising, education and training programmes about the Convention for professional groups working for and with children;

- ♦ take all appropriate measures to ensure that children born out of wedlock do not suffer discriminatory treatment or stigmatization and eliminate the terms “legitimate” and “illegitimate” from the Civil Code;
- ♦ take all appropriate measures to protect fully the rights of children born anonymously (“under x”) and ensure that the right of children to know their parents is fully enforced;
- ♦ take all appropriate legal and other measures to protect children from being exposed to violence and pornography through video movies and other modern technologies, including the Internet; pursue efforts to adopt legislation effectively prohibiting the possession of pornographic material involving children and engage bilateral cooperation with neighbouring countries in this effort;
- ♦ explicitly prohibit by law corporal punishment at home and in care institutions;
- ♦ take all appropriate measures, including of a legislative nature, to ensure that children placed in any form of institution are guaranteed all their rights, in particular the right to periodic review of placement; establish a monitoring mechanism for care and other types of institutions; pay particular attention to monitoring children placed in foreign institutions when specialized expertise or appropriate facilities do not exist in the country; undertake a study to assess the impact of placement of children in neighbouring countries;
- ♦ with regard to the rights of children with disabilities, take all measures to implement fully the 1994 law on school inclusion;
- ♦ specifically integrate human rights education, including the rights of the child, into school curricula;
- ♦ undertake a comprehensive study to identify reasons for the drop in breast-feeding after the first month; extend the period of maternity leave, make serious efforts to educate the public — especially new parents — on the benefits of breast-feeding; adopt other measures, as necessary, to counteract any negative impact on employment of women who wish to continue breast-feeding their children for a longer period of time; increase efforts to promote compliance with the International Code for Marketing of Breast Milk Substitutes;
- ♦ undertake studies on the causes of suicide and other mental health problems among young people and adopt measures to combat this phenomenon; undertake “youth-friendly” preventive, curative and rehabilitative measures to address the increasing problem of drug and substance abuse among young adolescents;
- ♦ reinforce legislation, policies and programmes to prevent and combat all forms of sexual exploitation and abuse, including child prostitution, child pornog-

raphy and trafficking in children; establish a comprehensive national plan of action and implement the recommendations of the 1996 Stockholm World Congress against Commercial Sexual Exploitation of Children; and

- ♦ give special attention to alternatives to detention within the administration of juvenile justice and to the prevention of suicides in detention; provide appropriate infrastructures to detained children in order to fully ensure their separation from adults and to guarantee that they have regular contacts with their family; and take fully into account the right of detained children to education, including vocational training.



## MALTA

**Date of admission to UN:** 1 December 1964.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Malta has not submitted a core document for use by the treaty bodies.

#### Economic, Social and Cultural Rights

Signed: 22 October 1968; ratified: 13 September 1990.  
Malta's initial report was due 30 June 1992; the second periodic report was due 30 June 1997.  
*Reservations and Declarations:* Article 13.

#### Civil and Political Rights

Acceded: 13 September 1990.  
Malta's second periodic report was due 12 December 1996.  
*Reservations and Declarations:* Article 13; paragraphs 2 and 6 of article 14; articles 19, 20, 21 and 22; declaration under article 41.

#### Optional Protocol:

Acceded: 13 September 1990.  
*Reservations and Declarations:* Article 1.

#### Second Optional Protocol:

Acceded: 29 December 1994.  
*Reservations and Declarations:* General reservation.

#### Racial Discrimination

Signed: 5 September 1968; ratified: 27 May 1971.  
Malta's 13th and 14th periodic reports were due 26 June 1996 and 1998 respectively.  
*Reservations and Declarations:* Articles 4 and 6.

#### Discrimination against Women

Acceded: 8 March 1991.  
Malta's initial and second periodic reports were due 7 April 1992 and 1996 respectively.

*Reservations and Declarations:* Paragraph 1 of article 2; article 4; articles 13, 15 and 16.

### **Torture**

Acceded: 13 September 1990.

Malta's second periodic report (CAT/C/29/Add.6) has been submitted and is yet scheduled for consideration at the Committee's May 1999 session; the third periodic report is due 12 October 1999.

*Reservations and Declarations:* Declaration under articles 21 and 22.

### **Rights of the Child**

Signed: 26 January 1990; ratified: 30 September 1990.

Malta's initial report (CRC/C/3/Add.56) has been submitted and is pending for the Committee's May/June 2000 session; the second periodic report was due 29 October 1997.

*Reservations and Declarations:* Article 26.



## **MONACO**

**Date of admission to UN:** 28 May 1993.

### **TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** Monaco has not submitted a core document for use by the treaty bodies.

### **Economic, Social and Cultural Rights**

Signed: 26 June 1997; ratified: 28 August 1997.

Monaco's initial report is due 30 June 1999.

*Reservations and Declarations:* Paragraph 2 of article 2; articles 6, 9, 11 and 13; paragraphs 1 (a), (b) and (c) and 2 of article 8.

### **Civil and Political Rights**

Signed: 26 June 1997; ratified: 28 August 1997.

Monaco's initial report was due 27 November 1998.

*Reservations and Declarations:* Paragraphs 1 and 2 of article 2; articles 3, 13, 19, 21, 22 and 25; paragraph 5 of article 14.

### **Racial Discrimination**

Acceded: 27 September 1995.

Monaco's initial and second periodic reports were due 27 October 1996 and 1998 respectively.

*Reservations and Declarations:* Paragraph 1 of article 2; article 4.

### **Torture**

Acceded: 6 December 1991.

Monaco's second periodic report was due 4 January 1997.

*Reservations and Declarations:* Paragraph 1 of article 30.

### **Rights of the Child**

Acceded: 21 June 1993.

Monaco's initial report was due 20 July 1995.

*Reservations and Declarations:* Article 7; paragraph 2 (b) (v) of article 40.



## **NETHERLANDS**

**Date of admission to UN:** 10 December 1945.

### **TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** The European part of the Kingdom of the Netherlands: The core document prepared by the government (HRI/CORE/1/Add.66) includes statistical data and summary commentary on the form and branches of government and the legal framework for the protection of human rights. The commentary incorporates information on, for example, relevant laws and institutions, legal aid, compensation, states of emergency and responsibility for supervising the observance of human rights.

### **Economic, Social and Cultural Rights**

Signed: 25 June 1969; ratified: 11 December 1978.

The Netherlands' second periodic reports (E/1990/6/Add.11; E/1990/C/Add.12; E/1990/C/Add.13) were considered at the Committee's April/May 1998 session; the third periodic report (E/1990/104/ADD.14) has been submitted and is pending consideration at the Committee's May 2000 session; the fourth periodic report is due 30 June 2003.

*Reservations and Declarations:* Paragraph 1 (d) of article 8.

### **Civil and Political Rights**

Signed: 25 June 1969; ratified: 11 December 1978.

The Netherlands' third periodic report was due 31 October 1991; the fourth periodic report was due 31 October 1996.

*Reservations and Declarations:* Paragraphs 2 and 3 of article 10; paragraphs 1, and 4 of article 12; paragraphs 3 (d), 5 and 7 of article 14; paragraph 2 of article 19; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Signed: 25 June 1969; ratified: 11 December 1978.

**Second Optional Protocol:** Signed: 9 August 1990; ratified: 26 March 1991.

### **Racial Discrimination**

Signed: 24 October 1966; ratified: 10 December 1971.

The Netherlands' 10th through 13th periodic reports were submitted as a single document (CERD/C/319/Add.2) which was considered at the Committee's March

1998 session; the 14th periodic report is due 9 January 1999.

### Discrimination against Women

Signed: 17 July 1980; ratified: 23 July 1991.

The Netherlands' second periodic report was due 22 August 1996.

*Reservations and Declarations:* Preambular paragraphs 10 and 11.

### Torture

Signed: 4 February 1985; ratified: 21 December 1988.

The Netherlands' third periodic report for Antilles and Aruba (CAT/C/44/Add.4) has been submitted and is scheduled for consideration by the Committee at its May 1999 session; the third periodic for the Kingdom was due 19 January 1998.

*Reservations and Declarations:* Paragraph 1 of article 1; declaration under articles 21 and 22.

### Rights of the Child

Signed: 26 January 1990; ratified: 6 February 1995.

The Netherlands' initial report (CRC/C/51/Add.1) has been submitted and is pending for the Committee's September/October 1999 session; the second periodic report is due 6 March 2002.

*Reservations and Declarations:* Articles 14, 22, 26, 37, 38 and 40.

## REPORTS TO TREATY BODIES

### Committee on the Elimination of Racial Discrimination

The 10th through 12th periodic reports for the Netherlands were submitted as one document (CERD/C/319/Add.2, March 1997) which was considered by the Committee at its March 1998 session.

With regard to the European part of the Kingdom, the report notes in the introduction that there is an essential difference between the terms "aliens" and "foreigners" and the term "ethnic minorities". The first two terms arise from a legal distinction between aliens and nationals. The term "ethnic minorities" refers to ethnic groups which are the subject of Dutch minorities policy. These groups include aliens and former aliens as well as Dutch nationals. The report contains information on, *inter alia*: case law relative to interpretations of term "racial discrimination"; the policy on minorities, the major cities policy (Amsterdam, Rotterdam, The Hague, Utrecht) and the policy on itinerants; anti-discrimination provisions in the Criminal Code and examples from case law; measures taken by the National Bureau against Racism; the work of the Advisory Council on Government Policy (WRR) vis-à-vis the situation and legal status of minorities; the Guidelines on Discrimination Cases with regard to the Public Prosecutors functions and examples from case law; provisions in the Criminal Code related to political parties and prosecution of right-wing extremist parties; the Aliens Act 1965, as amended in 1994; the

policy of the Central Manpower Services Board; the Joint Industrial Labour Council; the Act Governing the Promotion of Proportional Participation in the Employment Market for Immigrants; the Ethnic Minorities in Government plans (EMO); the Caravan Act, due to be withdrawn in January 1997, and incorporation of relevant protections in the Housing Act; the national project group on intercultural education; the multicultural society programme; and the results of annual opinion polls, conducted by the Social and Cultural Planning Office, reflecting what the general public thinks about minorities.

The second part of the report, on Aruba, contains statistics and demographic data on the foreign-born population, as well as, *inter alia*: non-discrimination provisions in the Constitution and Criminal Code; the Country Ordinance on Proscribed Associations; the Country Ordinance on Admission and Deportation; legal provisions related to, for example, equality before the law, security of person, the right to vote, equal access to public service, and freedom of movement and residence; provisions related to marriage, nationality, the right to own property and inheritance rights, the freedoms of religion, expression and peaceful assembly; the Training for Employment Scheme and freedom of association; housing and social assistance; remedy and compensation; and the education system and the language of education.

The third part of the report, on the Netherlands Antilles, contains information on, *inter alia*: constitutional provisions related to non-discrimination; the situation and status of migrants; illegal residence and immigration; statistical data related to population by, for example, nationality, place of birth, sex and age, age and marital status; the Admission and Expulsion Ordinance; employment and non-discrimination; the education system, housing, trade unions and workers' rights.

The Committee's concluding observations and comments (CERD/C/304/Add.46) viewed positively the concepts of multicultural society and inter-cultural education, proportional participation in employment in the army and the police, and the involvement of the civil society in activities aimed at the elimination of racial discrimination and intolerance. Other positive aspects included: the different policies and programmes initiated by the government or by local authorities in the fields of multicultural education and education of children of minorities, employment, combatting racist messages on the Internet, and involving persons from different minorities in health programmes and activities; the efforts undertaken, and the innovative measures adopted by, the government to prevent and combat racial discrimination; the government's willingness to recognize existing problems and to find appropriate solutions, both legislative and administrative; the active participation of organizations representing ethnic minorities, schools and employers in the elaboration and the execution of governmental programmes to combat racism; the draft Matching Bill (expected to come into force in July 1998), containing provisions aimed at narrowing the existing

differences in the state of health between members of ethnic and national minorities and the rest of the population; and the provision in the Matching Bill to provide illegal immigrants with essential health-care services.

The Committee expressed concern over, *inter alia*: the dissemination of ideas of racial superiority and of intolerance by various organizations, political parties and individuals; report indicating a lack of consistent compliance with the guidelines for the Public Prosecution Department, requiring the pursuit of an active investigation policy in discrimination cases and that prosecution be undertaken in all such cases; the increasing racial segregation in society, mainly in the large towns, with so-called "white" schools and neighbourhoods, noting similar trends in Aruba and in parts of the Netherlands Antilles; practices relating to the entry and control of foreigners, both in the continental territory, and in Aruba and the Netherlands Antilles, which could lead to racial discrimination in effect; the disproportionately low rate of participation of minorities in the labour market and their increasing unemployment rates, as well as reports of both direct and indirect forms of discrimination in recruitment procedures; the under-representation of ethnic minorities in most areas of education and, in particular, estimates that only 2 per cent of the total student population in higher education comes from ethnic minorities; and, in Aruba and the Netherlands Antilles, the fact that the process of education may not give the necessary attention to the reality that the majority of the population speaks Papiamentu.

The Committee recommended that the government, *inter alia*:

- ♦ give more attention to countering, investigating, and prosecuting such activities as dissemination of ideas of racial superiority and of intolerance by various organizations, political parties and individuals;
- ♦ take the necessary measures to ensure that regulations and practices related to the entry and control of foreigners do not have discriminatory effects;
- ♦ take action to ensure and promote equal opportunity in economic and social life, in particular with regard to education and employment;
- ♦ give more attention to providing students from ethnic minorities at all levels of education, as appropriate, instruction in their mother tongue;
- ♦ provide more information on the implementation of the 1994 Law of Equal Treatment and the activity of the Commission for Equal Treatment, noting proposals to extend the competence of this Commission and to make it more effective in countering discrimination;
- ♦ review its arrangements for the coordination by one ministry of all actions in implementation of the Convention, including reporting obligations; and

- ♦ introduce, in the next report, a consistent nomenclature and classification of ethnic and national minorities, and include information regarding the Frisian minority and data on the total population according to ethnic and national origin.

### Committee on Economic, Social and Cultural Rights

#### The European part of the Kingdom of Netherlands

The Netherlands second periodic report (E/1990/6/Add.11, April 1996) was considered by the Committee at its May 1998 session. The report prepared by the government contains information on, *inter alia*: long-term unemployed persons; youth employment programmes; measures to address the employment of older persons; the Equal Employment Opportunities Commission; pay equity and non-discrimination in employment; conditions of work, including remuneration, health and safety, equal promotion opportunities, hours of work and paid holidays; trade union rights and the right to strike; family law, child care, parenting support, youth services, maternity protection and the situation of children and young people; standards of living, including education, housing and adequate food; the national health policy, mental health care, access to health care for vulnerable groups; the elderly; the education system, including the Education Priority Policy (OVV) and measures addressing the rights to primary and secondary education; and cultural life, including the Arts Plan.

The Committee's concluding observations and comments (E/C.12/1/Add.25) noted that, to a considerable extent, the Netherlands has met its obligations with respect to the protection of the rights set out in the Covenant and welcomed: programmes and measures adopted in the education system to eliminate discrimination against women and to address social stereotypes of women in the media; the success of the campaign against racial discrimination, as seen in the fact that incidents of racial violence seem to have disappeared; the programmes to create new jobs and help the unemployed — particularly ethnic minorities, young people and persons over 50 years of age — to become part of or be reintegrated into the labour force; and the government's intention to withdraw its reservation to the Covenant concerning the right to strike. The Committee stated that the policy of providing subsidies for the construction of places of worship for the various religions was of considerable importance both in helping to combat discrimination and in contributing to the realization of the right to take part in cultural life.

Factors hindering implementation of the Covenant were noted as including the fact that the structural adjustment policy adopted by the government has lowered the standard of living of the lowest income groups. The Committee stated that the reduction in services and subsidies previously provided by the state has had adverse effects on wages, health, social security and education. Reference is made to the fact that the policy had not undergone

any change despite the economic growth recorded over the last four years, but the Committee noted the government's assertion that it will continue its efforts to alleviate the damage which the policy has caused, or may cause, to the most vulnerable sectors of society.

The principal subjects of concern identified included: the government's assertion that the Covenant is not directly applicable, noting the Committee's General Comment 3 (1990) that certain provisions of the Covenant are potentially able to be directly applied both in law and in policy; continuing discrimination against women at work, indicating that the principle of equality established by the law is not effectively enforced; evidence of racial discrimination in labour matters, contributing to some extent to unemployment among immigrants; discrimination in the labour market against persons 55 to 65 years of age; and the permissive nature of labour legislation with regard to overtime, possibly giving rise to a decline in the creation of further jobs.

The Committee also expressed concern over: the fact that the reform of the social security system may have certain adverse consequences for the most underprivileged sectors of society; the failure to analyse statistical data on violence against women and child abuse and to use that data to formulate measures to address these problems; the fact that the lack of information on child prostitution has prevented both the government and the Committee from appreciating the extent of this problem; the living conditions of asylum seekers in some reception centres in the country; and the consequences of the Tuition Fees Act which has led to a constant increase in the cost of education. Noting that Aruba and the Netherlands Antilles are equal parts of the Kingdom of the Netherlands and the government contributes 1.5 per cent of GNP every year to the islands, the Committee also expressed concern at the statement by the government that it is not responsible for the implementation of economic, social and cultural rights in Aruba and the Netherlands Antilles.

The Committee recommended that the government:

- ♦ reassess the extent to which the provisions of the Covenant might be given direct applicability within the Kingdom;
- ♦ intensify its efforts to guarantee men and women equal access to employment and equal wages for work of equal value;
- ♦ continue its endeavours to eliminate racial discrimination in the labour market with a view to facilitating the integration of immigrants and their families into the national life;
- ♦ adopt measures to promote access to the labour market for persons between the ages of 55 and 65;
- ♦ ensure that the reduction of budgetary allocations for social welfare programmes does not adversely affect the most vulnerable groups, and address this issue in detail in its next periodic report;

- ♦ adopt more clearly targeted policies to protect the welfare of the family, noting that the Ministry of Justice is analysing the results of studies on violence against women and on child abuse with a view to formulating new policies and implementing measures to combat these problems;
- ♦ provide, in its next periodic report, an update on policies and measures to combat violence against women and child abuse;
- ♦ take appropriate steps to alleviate or eliminate the adverse effects of the Tuition Fees Act; and
- ♦ ensure that it complies fully with its obligations under the Covenant as they apply to Aruba and the Netherlands Antilles.

### The Netherlands Antilles

The second periodic report on the Netherlands Antilles (E/1990/C/Add.12) covers the period from the beginning of 1989 to mid-1995. The report prepared by the government was considered by the Committee at its May 1998 session and contains information on, *inter alia*: statistical data related to the unemployment rate and the labour force; occupational and vocational training; rehabilitation for persons with disabilities; non-discrimination in employment; statistical data related to remuneration, wages and average incomes; trade unions and the right to collective action; social security and the welfare policy; medical services, insurance, and pensions; regulations related to youth employment; income and housing; development of infrastructures on the islands; freedom of education and the Law on Compulsory Education; critical problems in the area of education; and cultural policies, including the mandate and functions of the Department and Education and Culture (OKSNA) which is the cultural cooperation consultative body of the Netherlands Antilles.

The Committee's concluding observations and comments (E/C.12/1/Add.25, Section III) noted that the Netherlands Antilles has achieved a generally satisfactory level of compliance with its obligations in respect of the protection of the rights set out in the Covenant. As well, the Committee noted that, by law, primary education is compulsory in all the islands of the Netherlands Antilles.

With regard to the factors hindering implementation of the Covenant, the dispersal of the population over a large geographical area was noted as adding another dimension to the challenge of ensuring an effective system for the implementation and promotion of economic, social and cultural rights.

The principal subjects of concern identified by the Committee included: that none of the provisions of the Covenant may be directly invoked in the courts; the inequalities between women and men, particularly with respect to equal access to employment and equal wages for work of equal value; provisions that permit practices in matters of inheritance not to be governed by the principle of equity so as to benefit all those who have a legal

interest in the inheritance; the increase in the school drop-out rate, arising in part from the existence of several tongues spoken as first languages on the islands and the use of Dutch as the language of education; the existence of three minimum wage levels in each island, noting that such situations may give rise to or reflect discrimination; the acute shortage of housing, and forced evictions; homelessness which affects primarily the island of St. Maarten; and the compounding effects on housing and homelessness of the influx of migrants, of cyclones, and of a sharp decline in the annual expenditure dedicated to housing by the government.

The Committee recommended that the government:

- ♦ reassess the extent to which the provisions of the Covenant might be given direct applicability within the Netherlands Antilles;
- ♦ intensify its efforts to guarantee effective equality between women and men, particularly with regard to equal access to employment and equal wages for work of equal value;
- ♦ expedite the implementation of its programme for education in the students' mother tongues along with the progressive introduction of Dutch, in order to address the school drop-out problem;
- ♦ adopt, on an urgent basis, a plan of action to move towards the provision of free compulsory primary education;
- ♦ promulgate legislation for the standardization of minimum wages throughout the islands; and
- ♦ carry out its intention to withdraw its reservation to the Covenant concerning the right to strike.

#### Aruba

The second periodic report on Aruba (E/1990/C/Add.13) was considered by the Committee at its May 1998 session. The report prepared by the government, in conformity with Aruba's obligations as an autonomous entity of the Kingdom, contains information on, *inter alia*: constitutional provisions related to employment opportunities; the mandate and functions of the Department of Labour; the state of the labour market; the situation of women relative to each of the rights considered; child care; persons with disabilities; migrants and foreign workers; statutory provisions related to conditions of work; the Collective Labour Agreement and trade unions; social security — health, insurance, pensions, social assistance; the rights to adequate food and housing, nutrition; HIV/AIDS; the right to education; and the Office of Cultural Affairs which plays a guiding and coordinating role in the development and preservation of culture.

The Committee's concluding observations and comments (E/C.12/1/Add.25, Section II) welcomed the low rate of unemployment in Aruba but noted the challenges posed by the number of foreign workers in the territory in terms of implementation of the Covenant.

The principal subjects of concern identified by the Committee included: that none of the provisions of the Covenant may be directly invoked in the courts; the inequalities between women and men, particularly with regard to equal wages for equal work; the slow progress of the Joint Committee for the revision of the Civil Code, established in 1993 to remove the anachronistic provisions embodying the inequalities between women and men; and the fact that primary education is still not compulsory and there is a high rate of school drop-outs.

The Committee recommended that the government:

- ♦ undertake a reassessment of the extent to which the provisions of the Covenant might be given direct applicability in Aruba;
- ♦ intensify efforts to guarantee the effective implementation of equality between women and men, particularly with regard to equal wages for work of equal value;
- ♦ abolish provisions in legislation constituting any form of discrimination, and promulgate the new Civil Code as soon as possible;
- ♦ adopt on an urgent basis a plan of action to move towards the provision of free compulsory primary education;
- ♦ intensify efforts to address the school drop-out problem; and
- ♦ update laws and regulations in order to ensure full compliance with the Covenant.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Sale of children, child prostitution, child pornography, Special Rapporteur on the: (E/CN.4/1998/101, paras. 99–100)

In the section dealing with children as viewers of sexually explicit material on the Internet, the report refers to self-regulation and a programme titled the "Hotline for Child Pornography on Internet", which was created by the Dutch Foundation for Internet Providers (NLIP), Dutch Internet users, the National Criminal Intelligence Service (CRI), the National Bureau against Racial Discrimination, and a psychologist. The hotline operates by asking Internet users to report any child pornography that they find, and tries to take a preventative attitude towards the problem; once a site is reported, the Website provider will ask the issuer of the material (if traceable) to remove it. If he or she fails to do so, the Website provider will report that person to the police. The Special Rapporteur noted that the hotline has also raised awareness of the risks of spreading child pornography, including the fact that the penalty in the Netherlands is four years' imprisonment, and the related media attention has advanced the process of awareness and prevention.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, paras. 54, 62)

The report notes that the Netherlands is one of the largest waste exporters among OECD countries, including within the context of export of materials for recycling.

**Mechanisms and Reports of the Sub-Commission**

**Traditional practices affecting the health of women and girls, Special Rapporteur on:** (E/CN.4/Sub.2/1998/11, paras. 85–93)

The report refers to an initiative by the government involving preparation of a resolution for the 1997 General Assembly on the subject of traditional practices and, in particular, female genital mutilation. The Special Rapporteur (SR) recalled that the resolution was adopted (52/99) and sponsored by 79 governments, including a significant number from Africa and Asia.

The SR also noted the government's plans, in the context of the 50th anniversary of the Universal Declaration, to raise funds from outside sources to be contributed to the Voluntary Fund for Victims of Torture, and the activities of the Special Ambassador of the UN Population Fund for the elimination of female genital mutilation. Reference is also made to the government's hosting of an international meeting of experts, in February 1998, on the prevention and control of violence against women.



## NEW ZEALAND

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** New Zealand has submitted a core document (HRI/CORE/1/Add.33) for use by the treaty bodies. The report prepared by the government includes demographic data and information on the history of New Zealand, the economy, religion, language, the structure of government, the legal framework for the protection of human rights and the status of international treaties in domestic law.

The legal and institutional framework for the protection of human rights includes the Bill of Rights, the Human Rights Commission and laws related to, for example, mediation on administrative decisions or actions affecting human rights, access to information, privacy, complaints against the police, race relations, and the functioning of an industrial tribunal. The provisions of international human rights treaties are not automatically incorporated into domestic law but gain effect following changes to laws dealing with the areas addressed in each instrument. The Cook Islands and Niue have the

authority to ratify international human rights treaties in their own right and are responsible for preparing their own periodic reports for the relevant treaty bodies with New Zealand's assistance if requested.

### Economic, Social and Cultural Rights

Signed: 12 November 1968; ratified: 28 December 1978. New Zealand's second periodic report was due 30 June 1995.

*Reservations and Declarations:* Article 8 and paragraph 2 of article 10.

### Civil and Political Rights

Signed: 12 November 1968; ratified: 28 December 1978. New Zealand's fourth periodic report was due 27 March 1995.

*Reservations and Declarations:* Paragraphs 2 (b) and 3 of article 10; paragraph 6 of article 14; articles 20 and 22; declaration under article 41.

**Optional Protocol:** Acceded: 26 May 1989.

**Second Optional Protocol:** Signed: 22 February 1990; ratified: 22 February 1990.

### Racial Discrimination

Signed: 25 October 1966; ratified: 22 November 1972. New Zealand's 12th and 13th periodic reports were due 22 December 1995 and 1997 respectively.

### Discrimination against Women

Signed: 17 July 1980; ratified: 10 January 1985. New Zealand's third and fourth periodic reports (CEDAW/C/NZL/3-4 and CEDAW/C/NZL/3-4/Add.1) were considered at the Committee's July 1998 session. *Reservations and Declarations:* Reservation, article 11 (2) (b).

### Torture

Signed: 14 January 1986; ratified: 10 December 1989. New Zealand's second periodic report (CAT/C/29/Add.4) was considered at the Committee's May 1998 session; the third periodic report is due 8 January 1999.

### Rights of the Child

Signed: 1 October 1990; ratified: 6 April 1993. New Zealand's second periodic report is due 5 May 2000. *Reservations and Declarations:* General reservation; paragraph 1 of article 32; paragraph (c) of article 37.

New Zealand's initial report (CRC/C/28/Add.3) was considered by the Committee at its January 1997 session. The report prepared by the government includes information on, *inter alia*: measures taken to harmonize national law and policy with the provisions of the Convention; the general principles of non-discrimination, the best interests of the child, the right to life, survival and development and respect for the views of the child; name and nationality; expression and information; freedom of thought, conscience and belief, association and peaceful assembly; the protection of privacy; parental guidance

and responsibilities; separation from parents and family reunification; adoption, illicit transfer and non-return; abuse and neglect, physical and psychological recovery and social reintegration; basic health and welfare; children with disabilities; social security and standard of living; education, vocational training and guidance; special protection measures; and children belonging to a minority or indigenous group.

## REPORTS TO TREATY BODIES

### Committee against Torture

New Zealand's second periodic report (CAT/C/29/Add.4, February 1997) was considered by the Committee at its May 1998 session. The report prepared by the government covers the period from 9 January 1991 to 8 January 1995, although reference is made to more recent developments where appropriate. It contains information on, *inter alia*: the Mutual Assistance in Criminal Matters Act 1992; the protection and treatment of children and young persons in the care of the state; the Mental Health (Compulsory Assessment and Treatment) Act 1992; measures taken by the Inspectorate of the Penal Division of the Department of Justice in response to allegations of abuse of prisoners by staff at the Mangaroa Prison; the treatment of persons in psychiatric hospitals; the Health and Disability Commissioner Act 1994; the Accident, Rehabilitation and Compensation Insurance Act 1992; prosecution and sentencing under the Crimes of Torture Act 1989; the Police Complaints Authority; and the situation of refugees and asylum-seekers.

The Committee's concluding observations and comments (CAT/C/NZE) welcomed: recognition in the New Zealand Bill of Rights of the right of persons not to be subjected to torture or to cruel, degrading or disproportionately severe treatment or punishment; inclusion in the Crimes of Torture Act 1989 specific and directly enforceable provisions to prohibit acts of torture and the definition of "act of torture" in a manner consistent with article 1 of the Convention; changes in procedures for consideration of refugee applications so that the applications are now implemented by regular and not part-time staff; the provision on the clinical status of patients committed to mental hospitals, which ensures that such compulsory treatment will not violate the right to freedom of mental patients; inclusion in the training manuals of prison officers of information related to the prohibition against torture contained in the Crimes of Torture Act; and establishment of "Refugees as Survivors Centres".

The Committee expressed concern over instances of the use of physical violence by staff against prisoners in Mangaroa prison and allegations that the prisoners were molested by the guards, were not provided with medical treatment, and were deprived of food and proper places of detention. The Committee noted that while the facts — pending the results of the ongoing investigation — could not be considered as instances of torture, they already amounted to cruel and degrading treatment.

The Committee recommended that the government, *inter alia*:

- ♦ complete the investigation of the Mangaroa prison incidents and inform the Committee of the results;
- ♦ strengthen the supervision of the prisons to prevent misuse and abuse of power by personnel; and
- ♦ continue efforts to adopt the new law on extradition which would simplify the extradition procedure and permit the state to establish relations with non-Commonwealth countries, either on the basis of a treaty or without it.

### Committee on the Elimination of Discrimination against Women

New Zealand's 3rd and 4th periodic reports were submitted as one document (CEDAW/C/NZL/3-4, February 1998) which was considered by the Committee at its July 1998 session. The report prepared by the government contains statistical and demographic data, as well as information on, *inter alia*: measures taken to implement the Beijing Platform for Action; the Ethnic Affairs Service (Department of Internal Affairs); the Bill of Rights Act 1990, the Human Rights Act 1993, the Domestic Violence Act 1995; measures to identify and address remaining barriers to equality; women with disabilities; equal employment opportunities, affirmative action, maternity protection; sex roles and stereotyping — family life, violence against women, sexual abuse of children; suppression of the exploitation of women; participation in political and public life; access and participation in education; women in the workforce, barriers to equality in employment; health care, the Office of the Health and Disability Commissioner, general health indicators, sexual and reproductive health; access to loans and credit, retirement income; the situation of rural women and their activities; equality before the law in civil matters; and marriage and family life, parental rights and responsibilities, property rights, family violence. The report includes, in a number of sections, commentary on the situation of Maori women.

Annex I to the report contains information on the situation in Tokelau (Arafu, Fakaofu and Nukunonu) and notes that there is nothing in the Laws of Tokelau sanctioning any kind of discrimination against women. The report acknowledges that, in practice, Tokelau society continues to be largely organized according to custom and tradition, with a clear demarcation between male and female roles — men are involved in the public domain, women are involved in domestic and family issues. The report notes, however, that since 1994 representatives of the National Women's Organization have been members of the General Fono or Parliament.

The addendum to the government's report (CEDAW/C/NZL/3-4/Add.1) refers to developments in March 1998, including: establishment by Massey University of the New Zealand Centre for Women and Leadership; the agreement between the government and the union repre-

senting early childhood workers and primary school teachers on a unified pay system that will result in pay increases for teachers, most of whom are women; two legislative initiatives related to property rights — the Matrimonial Property Amendment Bill and the *de facto* Relationships (Property) Bill; and the establishment of the Maori Women's Development Unit of the National Collective of Independent Women's Refuges, targeting violence in Maori families.

The Committee's concluding observations and comments (CEDAW/C/1998/II/L.1/Add.9) welcomed, *inter alia*: the government's sensitivity to the situation of Maori women and its efforts to overcome obstacles to Maori women's achievement of equality; new legislative efforts, in particular the adoption of the Domestic Violence Act of 1995 and the designation of a Women's Commissioner on the Human Rights Commission.

Principal areas of concern identified by the Committee included, *inter alia*: the requirement for women to negotiate maternity leave individually with their employers, and constraints for obtaining unpaid maternity leave; the lack of awareness by women of existing unpaid parental leave rights; the failure to address adequately the impact on women of economic restructuring; that legislation such as the Employment Contracts Act of 1991, which emphasizes individual employment contracts rather than collective agreements, constitutes a major disadvantage for women in the labour market due to their dual responsibilities of work and family commitments; and the continuing wage-differential between women and men, pay differentials between women and men for equal work, and the impact of the repeal of the Pay Equity Act for women's equal pay rights.

The Committee expressed concern about: the ongoing privatization of social services and the introduction of fee-based systems in areas such as health, and the potential for a reduction in women's access to such services, especially for poor and Maori women; the fact that the Matrimonial Property Amendment Bill and the *de facto* Relationships (Property) Bill distinguish between the rights of married women in the division of property upon the death of a husband or following divorce, and the rights of women upon separation from a *de facto* partner; the failure of the Matrimonial Property Amendment Bill to take into consideration future earnings of a husband with regard to property divisions in divorce settlements; the fact that the situation of Maori women remains unsatisfactory in many areas, including the high percentage of Maori girls leaving school early, higher-than-average teenage pregnancy rates, the continuing low number of Maori women in tertiary education, their employment situation, their absence from the judiciary and political decision-making, their health situation and access to health services and higher-than-average incidences of domestic violence; and the inadequate effort being made to achieve targets set for gender balance, through the use of temporary special measures, in terms of women's equal participation in political and public life, including in Parliament, the judiciary and in statutory boards.

The Committee recommended that the government, *inter alia*:

- ♦ examine in greater detail paid maternity leave provisions that exist in a number of countries at a comparative level of economic and social development; study the impact of existing maternity leave provisions on women's equal pay and career opportunities; consider the possible long-term impact of this situation, especially in conjunction with the proposed Matrimonial Property Amendment Bill which does not recognize future earnings in divorce settlements; recognize maternity as a social function which must not constitute a structural disadvantage for women with regard to their employment rights;
- ♦ assess the impact of existing free-market legislation on women's ability to compete on an equal level with men in the labour market and assess the benefits that women derived from the favourable economic situation of recent years;
- ♦ make proactive use of temporary special measures in the public and private sectors to accelerate women's *de facto* equality in employment; systematically monitor trends in the situation of women, especially in the employment field, and assess regularly the impact of legislative and policy measures to achieve women's equality;
- ♦ make further efforts, including through legislation and innovative policies, to reduce the gender wage-differential; examine the impact of the Privacy Act on women's ability to seek redress in court for discriminatory unequal pay; consider developing an "equal pay for work of comparable value" strategy, and reinstate respective legislation;
- ♦ monitor closely the impact of privatization on social services, especially in health, so as to ensure equal access to quality health care for all women;
- ♦ reconsider the content of the *de facto* Relationships (Property) Bill with a view to bringing it in line with the Matrimonial Property Amendment Bill, especially since *de facto* relationships in the country are more common among the Maori population and a growing trend for the population in general;
- ♦ continue its efforts to implement fully the Treaty of Waitangi, with particular emphasis on achieving equality for Maori women in all areas covered by the Convention; translate, as a matter of priority, the Convention into the Maori language, and distribute it widely in Maori communities;
- ♦ consider introducing a broad range of measures, including targets and flexible numerical goals, to increase women's participation in political and public life; assess the advantages and disadvantages of the current electoral system — the Mixed Member Proportional Representation System — and, if necessary, introduce amendments to increase the number of women in Parliament; and

- ♦ upgrade the status and decision-making capacity of the Ministry for Women's Affairs, on the basis that its merely advisory and coordinating role is an impediment to furthering women's human rights.

### THEMATIC REPORTS

#### Mechanisms of the Commission on Human Rights

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/1998/101, para. 10)

The report refers to the development by police authorities of a strategic policy to aid in the prevention and detection of the commercial sexual exploitation of children. The policy has included active work by the national authorities to suppress the sexual exploitation and abuse of children, and address the problem of the Internet being used to disseminate child pornography.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, para. 12, 29; E/CN.4/1998/10/Add.1, "Comments received from States")

The addendum to the main report contains the government's response to information that was included in the Special Rapporteur's (SR) report to the 1997 Commission (E/CN.4/1997/19). The information related to the export of battery scrap from New Zealand to the Philippines. The government stated: the exports constituted neither "illicit traffic" nor "dumping", the two key elements of the mandate established by the Commission in its resolution 1995/81; since the transactions violated Philippines national law, the activities of importers based within the Philippines are within the jurisdiction of that government, not that of New Zealand; the export was a normal commercial transaction, not "dumping" in the trade sense nor was it "dumping" in the sense used in the wastes context, since the batteries were not subject to disposal but rather recycled as an input into industrial process in the Philippines; and, the trade was environmentally benign as it substituted the use of recycled lead for virgin lead. The government also noted that the information provided by the SR focussed in some detail on the industrial processing which followed the import of battery waste to the Philippines and stated that the potential impact, including from a human rights perspective, of such industrial processing was a different question from that of the movement and disposal of raw materials. The government expressed its doubts about this subsequent industrial processing being an element of the SR's mandate. The reply noted that both New Zealand and the Philippines have acceded to the Basel Convention, which provides a legal framework governing trade in hazardous wastes, including a system of Prior Informed Consent. Since New Zealand was not a state party to the Convention at the time of the alleged exports, a conclusion of "illicit" trade could not be based on legal obligations pursuant to the Basel Convention.



## NORWAY

**Date of admission to UN:** 27 November 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Norway has not submitted a core document for use by the treaty bodies.

#### Economic, Social and Cultural Rights

Signed: 20 March 1968; ratified: 13 September 1972.

Norway's fourth periodic report is due 30 June 1999.

*Reservations and Declarations:* Paragraph 1 (d) of article 8.

#### Civil and Political Rights

Signed: 20 March 1968; ratified: 13 September 1972.

Norway's fourth periodic report (CCPR/C/115/Add.2) has been submitted but is not yet scheduled for consideration by the Committee; the fifth periodic report is due 1 August 2001.

*Reservations and Declarations:* Paragraphs 2 (b) and 3 of article 10; paragraphs 5 and 7 of article 14; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Signed: 20 March 1968; ratified: 13 September 1972.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 13 February 1990; ratified: 5 September 1991.

#### Racial Discrimination

Signed: 21 November 1966; ratified: 6 August 1970.

Norway's 15th periodic report is due 5 September 1999.

#### Discrimination against Women

Signed: 17 July 1980; ratified: 21 May 1981.

Norway's fifth periodic report was due 3 September 1998.

#### Torture

Signed: 4 February 1985; ratified: 9 July 1986.

Norway's third periodic report (CAT/C/34/Add.8) was considered at the Committee's May 1998 session; the fourth periodic report is due 25 June 2000.

*Declarations and Reservations:* Declarations under articles 21 and 22.

#### Rights of the Child

Signed: 26 January 1990; ratified: 8 January 1991.

Norway's second periodic report (CRC/C/70/Add.2) has been submitted and is pending for the Committee's May/June 2000 session; the third periodic report is due 6 February 2003.

### REPORTS TO TREATY BODIES

#### Committee against Torture

Norway's third periodic report (CAT/C/34/Add.8, July 1997) was considered by the Committee at its May 1998

session. The government noted that a draft of the report was submitted for comment to the government's Advisory Committee on the Human Rights Working Group on UN-related Issues. It also referred to a visit to Norway, from 27 June to 6 July 1993, by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The report prepared by the government contains information on, *inter alia*: special investigative bodies (SIB) which were established to ensure that criminal charges against police are investigated impartially and independently; revisions to the Criminal Procedures Act in April 1995; the General Civil Penal Code; provisions in the Immigration Act and the Extradition Act 1975; cooperation with the International Tribunals on the former Yugoslavia and Rwanda; child welfare institutions and the Child Welfare Act; the mandate and functions of the Parliamentary Ombudsman; the Compensation for Damages Act 1969; the treatment of mentally retarded persons and the Act relating to Social Services; detention of asylum seekers; and, the incorporation of international human rights conventions into domestic law.

The Committee's concluding observations and comments (CAT/C/NOR) welcomed: the government's efforts to secure respect for human rights, including the prohibition of torture, in law and in practice; the creation and constant development of special bodies such as Special Investigation Bodies; and Norway's generous donation to the UN Voluntary Fund for the Victims of Torture.

Concern was expressed over the fact that the offence of torture had not yet been introduced into the penal system, including a definition of torture in conformity with article 1 of the Convention, and the use of solitary confinement, particularly as a preventive measure during pre-trial detention.

The Committee recommended that the government:

- incorporate into domestic law provisions on the crime of torture, in conformity with article 1 of the Convention; and
- abolish the use of solitary confinement — except in exceptional circumstances, *inter alia*, when the safety of persons or property is involved — particularly during pre-trial detention, or at least ensure that its use is strictly and specifically regulated by law and that judicial supervision is strengthened.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:**  
(E/CN.4/1998/101, para. 19)

The report refers to a 40-nation ministerial conference that was hosted by the government in October 1997 —

together with the International Labour Organization and UNICEF — on child labour. The Special Rapporteur noted that the participants agreed that prostitution and pornography, along with the persistent exploitation of children in slave-like and bonded conditions in hazardous and arduous work, constitute the most intolerable forms of child labour, with as many as 250 million young victims worldwide.



## PORTUGAL

**Date of admission to UN:** 14 December 1955.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Portugal has submitted a core document (HRI/CORE/1/Add.73) for use by the treaty bodies. The report prepared by the government includes demographic data as well as information on the general political structure, the courts, the legal framework for the protection of human rights, the Office of the Ombudsman and the Women's Equality and Rights Commission.

In Portugal human rights are protected by the Constitution, which consistently upholds the principles of equality before the law and non-discrimination, and ordinary legislation. Under article 8 of the Constitution international law is fully incorporated into domestic law and both the Constitution and laws are interpreted and implemented in harmony with the Universal Declaration. Any legislation that contravenes the Declaration is prohibited. The status of treaty law, however, is considered to be below the Constitution but above ordinary legislation. National institutions for ensuring respect for human rights include the Office of the Provedor de Justiça (Ombudsman), the Women's Equality and Rights Commission, the Attorney-General's Department, the Bureau for Documentation and Comparative Law, and the Commission on the Promotion of Human Rights and the Prevention of Educational Inequalities. For a number of years systematic training in the prevention of human rights violations has been carried out at the National College of Magistrates and the Bar, and for police forces, the prison service and the medical profession. The Ministry of Justice has also launched a programme entitled "the citizen and justice"; which is aimed at bringing transparency to the administration of justice and making access to justice easier by setting up reception, information and legal advice offices.

### Economic, Social and Cultural Rights

Signed: 7 October 1976; ratified: 31 July 1978.

Portugal's third periodic report (E/1994/104/Add.20) has been submitted and is pending for the Committee's April 2000 session; the fourth periodic report is due 30 June 2001.

**Civil and Political Rights**

Signed: 7 October 1976; ratified: 15 June 1978.

Portugal's third periodic report was due 1 August 1991; fourth periodic report was due 31 July 1996.

**Optional Protocol:** Signed: 1 August 1978; ratified: 3 May 1983.

**Second Optional Protocol:** Signed: 13 February 1990; ratified: 17 October 1990.

**Racial Discrimination**

Acceded: 24 August 1982.

Portugal's fifth, sixth, seventh and eighth periodic reports were submitted as one document (CERD/C/314/Add.1) which is pending for the Committee's March 1999 session; the ninth periodic report is due 23 September 1999.

**Discrimination against Women**

Signed: 24 April 1980; ratified: 30 July 1980.

Portugal's fourth and fifth periodic reports were due 3 September 1994 and 1998 respectively.

**Torture**

Signed: 4 February 1985; ratified: 9 February 1989.

Portugal's third periodic report was due 10 March 1998.

**Rights of the Child**

Signed: 26 January 1990; ratified: 21 September 1990.

Portugal's second periodic report (CRC/C/65/Add.11) has been submitted and is pending for the Committee's September/October 2001 session; the third periodic report is due 24 October 2002.

**THEMATIC REPORTS****Mechanisms of the Commission on Human Rights**

**Religious intolerance, Special Rapporteur on:** (E/CN.4/1998/6, paras. 48, 61)

Concerning conscientious objection, the report notes there is apparently a legal time limit within which conscientious objectors must declare their refusal to perform military service or apply to perform alternative service. Further, information indicated that the duration of alternative service is such as to be punitive in nature.

**Mechanisms and Reports of the Sub-Commission**

**Traditional practices affecting the health of women and girls, Special Rapporteur on:**

(E/CN.4/Sub.2/1998/11, paras. 83–84)

The report refers to information provided by the government stating that traditional practices affecting the health of women and children do not exist in Portugal but would be punishable as crimes assimilated to torture, under articles 243 and 244 of the Criminal Code. The Special Rapporteur noted that the right to health is rec-

ognized in the Constitution, which stipulates that it is the duty of the state actively to ensure that this right is guaranteed and made effective through the development of policies designed to protect it. Article 13 of the Constitution recognizes the right of all citizens to equality of treatment, by providing that no one may be privileged or harmed on the grounds of sex.

**SAN MARINO**

**Date of admission to UN:** 2 March 1992.

**TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** San Marino has not submitted a core document for use by the treaty bodies.

**Economic, Social and Cultural Rights**

Acceded: 18 October 1985.

San Marino's initial and second reports were due 30 June 1990 and 1995 respectively.

**Civil and Political Rights**

Acceded: 18 October 1985.

San Marino's second periodic report was due 17 January 1992; the third periodic report was due 17 January 1997.

**Optional Protocol:** Acceded: 18 October 1985.

**Rights of the Child**

Acceded: 25 November 1991.

San Marino's initial report was due 24 December 1993.

**SPAIN**

**Date of admission to UN:** 14 December 1955.

**TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** Spain has submitted a core document (HRI/CORE/1/Add.2/Rev.2) for use by the treaty bodies. The report prepared by the government contains information on the main demographic, economic and social indicators as well as the general political structure – the King, the legislative, executive and judicial powers – and the general legal framework for the protection of human rights.

The civil and political rights recognized internationally through the International Covenant on Civil and Political Rights are mirrored in the Constitution. Rights are subject to legislative guarantee, judicial protection and Con-

gressional action. The latter is provided through the Congressional Standing Constitutional Committee and the Standing Petitions Committee which may examine individual or collective petitions received by Congress. The Standing Petitions Committee may decide to refer a petition to the People's Advocate, the Congressional committee dealing with the issue concerned and/or the Senate; it may also refer a case to Government, the courts, the Office of the Public Prosecutor or the relevant public administration. The International Covenant on Civil and Political Rights has been fully incorporated into internal legislation. Spain has also ratified the European Convention on Human Rights as well as the European Convention against Torture.

### **Economic, Social and Cultural Rights**

Signed: 28 September 1976; ratified: 27 April 1977.  
Spain's fourth periodic report is due 30 June 1999.

### **Civil and Political Rights**

Signed: 28 September 1976; ratified: 27 April 1977.  
Spain's fifth periodic report is due 28 April 1999.

*Reservations and Declarations:* Declaration under article 41.

**Optional Protocol:** Acceded: 25 January 1985.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 23 February 1990; ratified: 11 April 1991.

*Reservations and Declarations:* Article 2.

### **Racial Discrimination**

Acceded: 13 September 1968.

Spain's 14th and 15th periodic reports were submitted as one document (CERD/C/338/Add.6) which is not yet scheduled for consideration by the Committee; the sixteenth periodic report is due 4 January 2000.

*Reservations and Declarations:* Article 22.

### **Discrimination against Women**

Signed: 17 July 1980; ratified: 5 July 1984.

Spain's third periodic report (CEDAW/C/ESP/3) has been submitted and is pending for consideration at the Committee's June 1999 session; the fourth periodic report was due 4 February 1997.

*Reservations and Declarations:* General reservation.

### **Torture**

Signed: 4 February 1985; ratified: 21 October 1987.

Spain's fourth periodic report is due 19 November 2000.  
*Reservations and Declarations:* Declaration under articles 21 and 22.

### **Rights of the Child**

Signed: 26 January 1990; ratified: 6 December 1990.

Spain's second periodic report was due 4 January 1998.  
*Reservations and Declarations:* Paragraph (d) of article 21; paragraphs 2 and 3 of article 38.

## **THEMATIC REPORTS**

### **Mechanisms of the Commission on Human Rights**

**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/1998/39, paras. 17, 19, 157–159)

In November 1997, the Special Rapporteur (SR) transmitted to the government a case related to the trial of the Executive Board of the political party Herri Batasuna. Information indicated that some members of the government made statements to the press that could affect the independence of the court, including a statement by the Minister of the Interior expressing the opinion that the members of the Executive Board should receive prison sentences of more than eight years. The SR also noted that the newspaper *El Mundo* published an article reporting that, according to a source from the Ministry of the Interior, it was expected that two of the three magistrates composing the court would be in favour of the conviction while the other one had not shown a clear position.

In its reply, the government stated that the information was not correct. The government asserted that the comment attributed to the Minister of the Interior had been taken out of context and was incomplete, noting that the full statement was "we are all morally certain that they should be sent to prison not for eight years but for many more. The crux of the issue is that moral certainty is not sufficient; what is needed is legal certainty". The government noted that the information published in *El Mundo* referred to "some sources", which did not include the Ministry or the Executive and, further, that the article was "guarded and cautious" and stated that "everything depended on what happens during the actual trial".

The SR noted the clarification with regard to the Minister's statement, and cautioned that it could be construed as an attempt by the Executive branch to influence the court on the sentence it will expect.

**Extrajudicial, summary or arbitrary execution, Special Rapporteur on:** (E/CN.4/1998/68, paras. 14, 17, 36, 39, 57, 68; E/CN.4/1998/68/Add.1, paras. 365–367)

The Special Rapporteur (SR) transmitted complaints to the government related to the deaths of a woman after being hit in the stomach by a rubber bullet fired by an officer of Ertaintza (Autonomous Basque Police), and of a man whose body was found, with a bullet hole in the chest, near the district of Itsaspe, Itziar, Guipúzcoa.

With regard to the first case, the government informed the SR that the criminal proceedings were dismissed after it was determined by the court that there was no connection between the rubber bullet wound and the death of Rosa Zarra Marín. The report notes, however, that according to the investigations conducted by the Autonomous Basque Police, and reported to the Institutions and Interior Commission of the Basque Parliament,

it appeared that the most probable cause of the wound was a ricochet from one of the rubber bullets. With regard to the second case, the government reported that an investigation was carried out by Eibar Criminal Investigation Court No. 1 and no information from the exhaustive investigation carried out pointed to anything but suicide.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, paras. 53, 69)

The report refers to information related to the government's expulsion and refoulement in June 1996 and January 1997 of 103 nationals of various African countries from the towns of Melilla and Ceuta, and the readmission to Morocco of 35 nationals of various African countries of the Sub-Saharan region who had been in the Calamocaro camp at Ceuta.

In its reply the government noted that the foreigners covered by its expulsion and refoulement action had been illegally located on Spanish territory, and that at all times legal procedures in respect of their refoulement were respected. The government noted that none of the persons concerned had requested asylum and, further, stated: the internment of some of the persons in the Aliens Centres at Malaga and in the Centre Euro-latino-américain de la jeunesse de Mollina (CEULAJ) was authorized by a judicial decision; the operation was carried out in cooperation with the government of Guinea Bissau, which had undertaken to establish the identity of the foreigners, provide them with papers, and return them to their countries of origin, although it did not do so immediately; and 35 of the foreigners were readmitted to Morocco, bearing in mind the 1992 agreement concluded between Spain and Morocco under which Morocco must ensure that any foreigners readmitted are sent to their country of origin or to the country in which they began their journey. The government stated that: the facilities of the centres in which immigrants from the Sub-Saharan area are accommodated in the towns of Ceuta and Melilla, the Calamocaro camp and the Granja Agricola, have been improved and transformed to ensure that the living conditions of such foreigners are fair; and, a reception and assistance programme is being carried out in the peninsula by the Ministry of Labour and Social Affairs with the help of NGOs.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, paras. 174–175; E/CN.4/1998/38/Add.1, paras. 387–392)

The report acknowledges the difficulties of combatting terrorist activities and the possibility that in such situations false, as well as true but unprovable, allegations of torture may be made. The Special Rapporteur (SR) recommended that the government give serious consideration to the possibility of introducing a system of video recording of interrogations in order not only to protect prisoners from abuse, but also to protect law enforcement officials from false accusations.

A number of cases were transmitted to the government related to arrest, detention and/or ill treatment

involving, *inter alia*: an inmate at the Alcalá Meco prison, Madrid, noting that an appeal was made to the Prison Examining Magistrates Court No. 3 in Madrid, but the appeal was dismissed; an inmate at Puerto I prison, noting a complaint was filed with the Bilbao police court and the subsequent medical examination had found that the inmate had suffered light injuries consisting of scratches on his back; an inmate at Los Rosales prison, Ceuta, noting a medical examination had found that the person had sustained injuries diagnosed as light, consisting of haematomas, scratches on the nose, and erythema in the left lumbar region, and that Ceuta Examining Court No. 4 had instituted proceedings as a result of communication from the director of the establishment; two persons who were reported to have been handed over by the French authorities to the Civil Guard, held incommunicado and denied access to a lawyer for some time, noting in the first case the government statement that medical reports mentioned no marks on his body consistent with the treatment alleged, the person made no claim of ill treatment, and in the absence of any complaint the judge did not order the opening of an investigation and, in the second, that a complaint of ill treatment was being handled by Central Examining Court No. 5.



## SWEDEN

**Date of admission to UN:** 19 November 1946.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Sweden has not submitted a core document for use by the treaty bodies.

**Economic, Social and Cultural Rights**

Signed: 29 September 1967; ratified: 6 December 1971.

Sweden's fourth periodic report is due 30 June 1999.

*Reservations and Declarations:* Paragraph (d) of article 7.

**Civil and Political Rights**

Signed: 29 September 1967; ratified: 6 December 1971.

Sweden's fifth periodic report is due 27 October 1999.

*Reservations and Declarations:* Paragraph 3 of article 10; paragraph 7 of article 14; paragraph 1 of article 20; declaration under article 41.

**Optional Protocol:** Signed: 29 September 1967; ratified: 6 December 1971.

*Reservations and Declarations:* Paragraph 2 of article 5.

**Second Optional Protocol:** Signed: 13 February 1990; ratified: 11 May 1990.

**Racial Discrimination**

Signed: 5 May 1966; ratified: 6 December 1971.

Sweden's 13th periodic report was due 4 January 1997.

**Discrimination against Women**

Signed: 7 March 1980; ratified: 2 July 1980.  
Sweden's fourth periodic report (CEDAW/C/SWE/4) has been submitted but is not yet scheduled for consideration by the Committee; the fifth periodic report is due 3 September 1998.

**Torture**

Signed: 4 February 1985; ratified: 8 January 1986.  
Sweden's fourth periodic report is due 25 June 2000.  
*Reservations and Declarations:* Declarations under articles 21 and 22.

**Rights of the Child**

Signed: 26 January 1990; ratified: 29 June 1990.  
Sweden's second periodic report (CRC/C/65/Add.3) has been submitted and is pending for the Committee's January 1999 session; the third periodic report is due 1 September 2002.

**THEMATIC REPORTS****Mechanisms of the Commission on Human Rights**

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:**  
(E/CN.4/1998/101, para. 108)

In the section dealing with children as viewers of sexually explicit material on the Internet, the report refers to the Bill on Responsibility for Electronic Notice-Boards which proposed that a new special law should be introduced regulating such responsibility. It was proposed that the law: would come into force on 1 May 1998; would not apply to providers of networks or other connections for the transmission of messages; would stipulate that providers must give the users of the service information about their identity and to what extent incoming messages become available to other users; would require providers to remove or otherwise prevent continued dissemination of certain categories of message from their services (e.g., incitement to criminal acts, vilification of groups of people, child pornography, or the unlawful depiction of violence); and would sentence a provider to pay a fine if it intentionally or through negligence did not give this required information, or did not prevent further dissemination of a message belonging to these categories.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, para. 182; E/CN.4/1998/38/Add.1, paras. 412)

In December 1997 the Special Rapporteur transmitted an urgent appeal on behalf of a Turkish Kurd from Adiyaman governorate, whose application for asylum in Sweden had reportedly been rejected. Information indicated that the person had been subjected to arrest, imprisonment, and torture in Turkey on a number of occasions on account of his active support for the Kurdish Workers' Party (PKK). The report notes that an examination by the Centre for Torture and Trauma Survivors in Stockholm reportedly revealed that he suffered from a post traumatic stress disorder, and fears were

expressed that he might be detained and again subjected to torture upon his return to Turkey.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, para. 62)

In the context of the legal export of wastes of recycling, the report notes that Sweden is among the largest OECD exporters of such wastes.

**Mechanisms and Reports of the Sub-Commission**

**Traditional practices affecting the health of women and girls, Special Rapporteur on:**  
(E/CN.4/Sub.2/1998/11, para. 94)

The report notes that legislation concerning female genital mutilation has been strengthened. Preparation of, and conspiracy to commit, the offence, as well as the failure to report cases of female genital mutilation to the authorities are now punishable. Consideration was also being given to the possibility of expanding the area of criminal responsibility to any person who has carried out female genital mutilation outside of Sweden.

**SWITZERLAND**

**Date of admission to UN:** Switzerland is not a member of the UN.

**TREATIES: RATIFICATIONS AND RESERVATIONS**

**Land and People:** Switzerland has submitted a core document for use by the treaty bodies. The report prepared by the government (HRI/CORE/1/Add.29) includes demographic data, and historical background and information on the government structure and the legal framework for the protection of human rights.

Switzerland does not have one single system of justice but rather 26 different systems functioning at the cantonal level. Remedy for violations of human rights exists through administrative law as well as through an application for a "public law remedy" filed with the Federal Tribunal. The Federal Judicial Organization Act stipulates that an action may be applied for in the Federal Tribunal against a cantonal decision or judgement, once cantonal remedies have been exhausted, for a violation of the constitutional rights of citizens, international treaties (in some cases), the right of citizens to vote and the rights relating to cantonal elections and voting, and violations of directly applicable provisions of multilateral human rights conventions. The Constitution provides for, among other rights: equality before the law, the abolition of privileges, equality between women and men, right of ownership, freedom of trade and industry, the political rights of citizens, freedom of conscience and belief, freedom of the press, freedom of association, due process, the prohibi-

tion of special courts, the prohibition of corporal punishment and the abolition of the death penalty. The Federal Tribunal has interpreted the Constitution in such a way as to establish, as well, the rights to freedom of expression, freedom of person, freedom of language and freedom of assembly. Each canton also has its own constitution so that rights are elaborated at the cantonal level. Federal and cantonal constitutional provisions are supplemented by the European Convention on Human Rights. International human rights treaties form a part of federal law from the time they enter into force for Switzerland without need of adoption of special laws. The provisions of international treaties, however, are not directly applicable by national courts and are not, therefore, self-executing.

### **Economic, Social and Cultural Rights**

Acceded: 18 June 1992.

Switzerland's initial report (E/1990/5/Add.33) was considered at the Committee's December 1998 session; the second periodic report is due 30 June 1999.

### **Civil and Political Rights**

Acceded: 18 June 1992.

Switzerland's second periodic report was due 17 September 1998.

*Reservations and Declarations:* Paragraph 2 (b) of article 10; paragraph 1 of article 12; paragraph 1, 3 (d) and (f) and 5 of article 14; paragraph 1 of article 20; paragraph (b) of article 25; article 26; declaration under article 41.

**Second Optional Protocol:** Acceded: 16 June 1994.

### **Racial Discrimination**

Acceded: 29 November 1994.

Switzerland's initial report (CERD/C/270/Add.1) was considered at the Committee's March 1998 session; the second periodic report was due 29 December 1997.

*Reservations and Declarations:* Article 4; paragraph 1 (a) of article 2.

### **Discrimination against Women**

Signed: 23 January 1987; ratified: 27 March 1997.

Switzerland's initial report was due 26 April 1998.

*Reservations and Declarations:* Paragraph (b) of article 7; paragraph 1 (g) of article 16; paragraph 2 of article 15; paragraph 1 (h) of article 16.

### **Torture**

Signed: 4 February 1985; ratified: 2 December 1986.

Switzerland's fourth periodic report is due 25 June 2000.

### **Rights of the Child**

Signed: 1 May 1991; ratified: 24 February 1997.

Switzerland's initial report is due 23 March 1999.

*Reservations and Declarations:* Articles 5 and 7; paragraph 1 of article 10; paragraph (c) of article 37; article 40.

## **REPORTS TO TREATY BODIES**

### **Committee on Economic, Social and Cultural Rights**

Switzerland's initial report (E/1990/5/Add.33, September 1996) was considered by the Committee at its November 1998 session. The report prepared by the government is detailed, takes account of the status of legislation as at 1 January 1995, and reflects the federal, cantonal and communal jurisdictions with regard to rights under the Covenant. The report cites case law and rulings of the Federal Tribunal where relevant. Information is provided on, *inter alia*: federal constitutional provisions relative to Covenant rights, equality and non-discrimination; provisions related to equality between women and men and the Federal Act concerning equality between men and women which entered into force in July 1996; permissible restrictions on rights; prohibition of the abuse of rights; the right to work, the labour market situation, unemployment and employment promotion measures, vocational training and guidance; the Disability Insurance Act (1959) and the integration of persons with disabilities into the workplace; conditions of work, minimum and average wages, equal pay for work of equal value; the scope of, and provisions in, the Labour Act; trade unions and workers' rights; permissible restrictions on the freedom to form associations and the right to strike; social security, benefits, health care, the Sickness Insurance Act (1994), pensions, family allowances; protection of family, mothers and children, relevant provisions in the Civil Code, free consent to marriage; the right to an adequate standard of living, poverty, social welfare, food and nutrition, housing; health care and the health system, maternal and infant mortality, substance abuse, youth suicide, environmental health, HIV/AIDS; education and the education system; the right to culture — museums, libraries, the media, theatre, etc.; and science and research, patents and copyright.

The Committee's concluding observations and comments (E/C.12/1/Add.30) welcomed, *inter alia*: that the Covenant has begun to be accepted as an integral part of the Swiss legal system; the range and quality of the services provided to the population as a whole, in particular social benefits for the elderly and persons with disabilities; measures taken to ensure for foreigners residing in the country the realization of their economic, social and cultural rights; and the efforts to integrate foreign workers and their families.

The principal subjects of concern identified by the Committee included, *inter alia*: the government's view that provisions of the Covenant constitute principles and programmatic objectives rather than legal obligations and, consequently, cannot be given legislative effect; failure to accord constitutional recognition to certain rights, e.g., the right to work, to education, and to culture; the existence of unacceptable levels of poverty among certain segments of the population, in particular among women; continuing restrictions on the right to strike for civil servants and reform efforts providing for the privatization of certain public services; the non-ratification by Switzer-

land of ILO Conventions Nos. 98 and 174; failure of Parliament to recognize the right to maternity benefits; that *de facto* discrimination against women and ethnic minorities continues to exist; the relatively high proportion of women in lower paid jobs and among part-time and “on-call” workers, and also the comparatively low proportion of women in higher education; the high incidence of domestic violence against women; and that the available statistical data on violence against women and child abuse, including paedophilia, have not been analysed or used to formulate measures to address these problems.

Concern was also expressed over: the lack of information in the report on the mental health of the population as a whole and on the health of patients with mental disorders in particular; the silence of the report on abortion and the incidence of diseases particular to women; that the ongoing reform of the social security system may have adverse consequences for the underprivileged sectors of society; and the high costs of health services that are administered by private companies.

The Committee recommended that the government, *inter alia*:

- ♦ take appropriate steps to give full legal effect to the Covenant, so that the rights covered by it may be fully integrated into the legal system; further harmonize the cantonal system to ensure due respect for the provisions of the Covenant, particularly with regard to fundamental rights such as the right to work, education and culture;
- ♦ adopt, as soon as possible, the draft legislation concerning the right of civil servants to strike; formulate any modification to the Statute on civil servants in such a way as to safeguard the acquired rights of civil servants, as guaranteed in the Covenant;
- ♦ ratify ILO conventions 98 and 174;
- ♦ provide adequate social security protection to pregnant women and recent mothers; take all possible measures, in particular at the social infrastructure level, to make it easier for women who wish to work outside the home to do so; intensify efforts to guarantee women and men equal access to employment and equal wages for work of equal value;
- ♦ play a more active role in the promotion of equal access to higher education by women, immigrants and ethnic minorities;
- ♦ update, in the next report, information on measures taken to combat the phenomena of domestic violence and of paedophilia;
- ♦ include information in the next report on the mental health of the population and, in particular, patients with mental disorders and on progress achieved in this field; and
- ♦ review its system of health care to prevent high costs from having a negative effect on the standard of living of families.

## Committee on the Elimination of Racial Discrimination

Switzerland's initial report (CERD/C/270/Add.1, January 1997) was considered by the Committee at its March 1998 session. The report prepared by the government states that Switzerland does not have ethnic minorities in the strict sense, and that the only group that might be classified in that category is the nomads or “people of the road” who regard themselves as being of “Jenisch” stock, although some are related to the Roma or the Sinti. The report contains demographic and statistical data, as well as information on, *inter alia*: constitutional protections and prohibitions; laws and measures at the federal and cantonal levels; the Federal Commission on Racism, the Federal Commission on Foreigners, the Federal Commission for Refugees; linguistic minorities and the “Jenisch” minority; migration issues and immigration policy; the admission and quota and integration policies; the attitudes of police towards foreigners; provisions in the Penal Code related to racist ideas, incitement and propaganda, and Switzerland's reservation to article 4 of the Convention; equality before the law; the rights to liberty and security of person, to elect and be elected; the political rights of foreigners; freedom of movement and residence, the rights to nationality and to own property, inheritance rights; freedom of thought, conscience, religion, opinion and expression, limits on expression; provisions in the Code of Obligations related to employment and workers' rights, trade unions; housing, health, social assistance and social security; education, teaching, culture and information; the Conference of Cantonal Directors of Education and activities to combat and prevent racism; and activities of the Pro Helvetia Foundation.

The Committee's concluding observations and comments (CERD/C/304/Add.44) welcomed the establishment of the Federal Commission against Racism and the Commission's initiatives in the sphere of education and information, as well as amendments to the Criminal Code to give effect to articles 4 (prohibition of racist ideas and organizations) and 5 (f) (right of access to public places) of the Convention.

The principal subjects of concern identified by the Committee included, *inter alia*: the lack of comprehensive legislation to combat discrimination based on race, colour, descent, or national or ethnic origin, noting that such legislation should include measures to combat racial discrimination in labour relations and housing and, more generally, racial discrimination by any person, group or organization; pending revision, the current immigration policy which classifies foreigners on the basis of their national origin; the extensive system of police control of foreigners, as well as the naturalization policies and procedures, which are too protracted and selective; serious incidents of police brutality in dealings with persons of foreign ethnic or national origin; restrictions on freedom of movement imposed on the Jenisch population and on the Sinti and Roma minorities, as well as tendencies to discredit them; incidents of xenophobia, anti-Semitism, racial discrimination and racial violence; and failure to implement fully article 4 (b) of the Con-

vention, particularly with regard to participation in illegal and prohibited organizations.

The Committee recommended that the government, *inter alia*:

- ♦ ensure that future constitutional amendments include a clear repudiation of racial discrimination;
- ♦ give serious consideration to the enactment of a comprehensive law banning discrimination based on race, colour, descent, or national or ethnic origin;
- ♦ review those elements of the current immigration policy which classify foreigners on the basis of their national origin, and reconsider the reservation made to article 2, paragraph 1 (a), of the Convention;
- ♦ monitor all tensions which may give rise to racial segregation and work for the eradication of any negative consequences that ensue;
- ♦ take the necessary steps to implement article 4 (b) of the Convention and include, in the next report, information on complaints of discrimination under article 4, actions taken by prosecution authorities and by the competent courts as well as, where appropriate, on reparation granted to victims; and
- ♦ provide adequate resources to the Federal Commission against Racism to enable it to carry out its tasks effectively and support other organizations and institutions concerned with race relations.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/1998/39, paras. 18, 19, 160–162, 186)

The report refers to a June 1997 communication, sent with the Special Rapporteur on torture, related to the case of a Nigerian lawyer, human rights activist and the Executive Director of the Lagos-based Constitutional Rights Project, who was arrested in Geneva April 1997 and detained for five days incommunicado. The lawyer was in Geneva to attend the 53rd session of the Commission on Human Rights and was arrested on suspicion of shoplifting. Information indicated that he was severely beaten and kicked during and after arrest, denied the right to obtain counsel of his choice, made to sign the record of the proceedings before the examining magistrate without the presence of counsel, compelled to sign this document despite the fact that he was unable to read it because it was in French, and tried, convicted, and sentenced without a lawyer to defend him in what appeared to be a trial not open to the public. The lawyer was convicted of theft and sentenced to 20 days' imprisonment and ordered to be expelled from the country. The sentence was suspended.

The government replied stating: the regrets of Swiss authorities, as well as the police, were conveyed to the victim; the Minister in charge of Geneva's Department of Justice, Police and Transports immediately set up an administrative inquiry into the treatment received while in police custody; upon receiving the conclusions of the inquiry, the Minister sent a letter to the lawyer requesting him to accept the apologies of the government and informing him that appropriate measures would be taken against the members of the police concerned, and the lawyer could commence civil proceedings against the state for damages. Additional information provided by the government noted that an appeal court had acquitted the lawyer of the charge of theft but convicted him of the charge of resisting arrest in a public place. The administrative inquiry concluded, however, that the treatment administered by the police was not in conformity with acceptable principles of police behaviour. The government drew attention to the fact that disciplinary actions would be taken against the four police officers involved in the case.

The Special Rapporteur (SR) acknowledged the information provided by the government and welcomed the positive steps taken in the case. The SR noted, however, that no information was provided with regard to the alleged lack of independence of the tribunal which convicted the lawyer in defiance of the principles of due process. Reference was also made to the fact that the appeal court had set aside the conviction of theft but had found it fit to convict on the charge of resisting arrest for an offence which was never committed in law. The SR recommended that the government offer the victim adequate compensation, thereby avoiding protracted civil litigation in the Swiss courts and the resultant costs and expense.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, para. 50)

The report refers to an addition to the Penal Code, article 261 bis, that forbids all racist propaganda, including by electronic means. The report also notes that in October 1997, the government adopted a bill on liability arising from the use of the Internet.

**Religious intolerance, Special Rapporteur:** (E/CN.4/1998/6, paras. 48, 50, 59, 69, 89)

The report refers to violations of freedom of religion and belief against the Church of Scientology, noting that state schools in some cantons are said to have courses on the Church of Scientology in which it is described as a sect. The report notes that parents who are members of Scientology have tried to institute private education, but have been refused permission to establish a private school.

In its reply, the government provided a clear and careful review of cantonal and federal court decisions which demonstrated that the members of the Church of Scientology were not treated in a discriminatory manner in comparison with other religious communities, particularly in the area of public and private education. The gov-

ernment further stated that adequate legal means existed at the federal and cantonal levels, through which the representatives of the Church of Scientology had been able to secure enforcement of the rights they were claiming.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, paras. 183–184; E/CN.4/1998/38/Add.1, paras. 413–416)

The reports refer to the case of the lawyer from Nigeria who was arrested and subjected to ill treatment by the police (see the section on the independence of judges and lawyers).

A second case transmitted to the government concerned a Gambian national who was deported from Switzerland in September 1995, and had reportedly been ill-treated both while in detention prior to deportation and by the two Swiss police officers during his accompanied flight to the Gambia. The government replied that attempts had been made on three occasions to deport the person named, he had resisted, and authorities had been unable to put him on the plane. The government stated: on the third occasion, his resistance had resulted in injuries both to himself and to a police officer, injuries for which the person received treatment and which were not caused by torture as alleged; as a result of this incident, it was thought necessary to use proportionate means of restraint to carry out the deportation successfully; immediately following take-off, the restraints were removed and he was not restrained during the entire journey or deprived of food and water, as claimed; neither did he fall unconscious on the plane. According to the information received from the government, the reported statements to the contrary by the two Swiss police officers involved, were obtained by compulsion following their harassment and detention upon arrival in Banjul, an incident over which the government later made a formal complaint to the Gambian government.

A third case related to two Turkish Kurds who had been granted political refugee status in Switzerland and were reportedly arrested by the police in Ticino on 6 April 1995, severely beaten and tied to a very hot radiator. The government replied that the two men had been detained for carrying illegal persons in their car, and had been brought to the Chiasso police station for charges, but had been released on bail an hour later. The men filed a complaint of ill treatment to the Public Prosecutor of Tessin through the intermediary of the Oeuvre suisse d'entraide ouvrière (OSEO), enclosing medical reports, but the complaint was discontinued when the OSEO failed to comply with the prosecutor's request for a power of attorney. The decision not to proceed was confirmed by the Swiss Federal Tribunal, noting that the delays of four and five days between the arrest and medical examinations meant that it was impossible to establish cause, and referring to a statement by the translator who had been present during the interrogation that nothing abnormal had happened.

The Special Rapporteur noted the concern of the Human Rights Committee over numerous allegations of ill treat-

ment in the course of arrests or police custody, particularly with regard to foreign nationals or Swiss citizens of foreign origin, and reports on the failure of the authorities to follow up complaints against the police and the disproportionate nature, if not absence, of penalties (A/52/40, para. 98). The SR also noted similar concerns expressed by the Committee against Torture (CAT/C/308).



## TURKEY

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** Turkey has not submitted a core document for use by the treaty bodies.

#### Racial Discrimination

Signed: 13 October 1972.

#### Discrimination against Women

Acceded: 20 December 1985.

Turkey's fourth periodic report is due 19 January 1999.

*Reservations and Declarations:* Paragraphs 2 and 4 of article 15; paragraphs 1 (c) (d) (f) and (g) of article 16; paragraph 1, article 29; paragraph 1 of article 9.

#### Torture

Signed: 25 January 1988; ratified: 2 August 1988.

Turkey's second periodic report was due 31 August 1993; the third periodic report was due 31 August 1997.

*Reservations and Declarations:* Declarations under articles 21 and articles 22.

#### Rights of the Child

Signed: 14 September 1990; ratified: 4 April 1995.

Turkey's initial report was due 3 May 1997.

*Reservations and Declarations:* Articles 17, 29 and 30.

### THEMATIC REPORTS

#### Mechanisms of the Commission on Human Rights

##### Arbitrary detention, Working Group on:

(E/CN.4/1998/44, para. 19)

The report notes that an urgent appeal was sent to the government on behalf of one person but no details of the case were provided.

##### Disappearances, Working Group on enforced or involuntary:

(E/CN.4/1998/43, paras. 3, 9, 13, 24, 25, 35, 37, 42, 55, 366–378)

On the issue of compensation, the report refers to information provided by the government indicating: compen-

sation is paid only after penal sanctions are imposed on the perpetrators; if a person has disappeared under circumstances which suggest that the person was killed, the highest administrative authority has the capacity to declare the presumption of death of the individual; any related person may initiate the procedure leading to a declaration or presumption of death, or absence; and, a presumption of death must be established before payment of compensation may be made.

The report notes that the government agreed to a visit by the Working Group (WG), and that the mission was likely to take place during 1998.

During the period under review, eight newly reported cases were transmitted to the government, two of which were reported to have occurred in 1997. During the same period, two cases were clarified on the basis of information provided by the government, stating that the persons concerned had been released from custody. One other case was clarified when it was confirmed that the missing person was in prison.

Since the creation of the WG's mandate, 153 cases have been reported; 70 of them have been clarified. The majority of cases occurred in south-east Turkey, in areas where a state of emergency was in force. The peak of alleged cases of disappearances occurred in 1994. The report notes that allegations imputing disappearances to insurgent groups have also been received, but in conformity with the definition of disappearances in the preamble to the Declaration, the WG does not consider such cases.

The victims of the newly reported cases were all Kurds and their disappearances took place in Diyarbakir, south east Turkey, which is a region under a state of emergency. In six of the cases, plain clothes police officers were allegedly responsible. In two other cases, the alleged perpetrators were said to be members of the Anti-Terror Branch.

The WG stated that the existence of a state of emergency is reported to continue to be a major obstacle to the implementation of the Declaration, as it has led to excessive concentration of power in the hands of the authorities. Impunity is said to be another contributing factor in the continuation of violations of human rights. Reportedly, although members of the security forces are said to be responsible for most cases of enforced disappearances, they are never brought to trial or prosecuted for these acts. It is further alleged that one of the obstacles to prosecuting police officers, particularly in the provinces under a state of emergency decree, is the Temporary Law on the Procedure for Investigation of Civil Servants, which dates from 1913. According to this law, the decision to prosecute members of the security forces for acts committed in the course of their duties is not in the competence of the prosecutor, but of local administrative councils, which are made up of civil servants under the influence of the regional or provincial governor, who is also the head of the security forces.

With regard to seven of the new cases, the government informed the WG that none of the persons named had been taken into custody and there was no record with the police; and investigations into those cases were under way. The government also provided replies of a more general nature related to a series of measures to eliminate human rights violations, including: reforms in the judiciary, instructions to police to conform strictly to all relevant national legislation and all international commitments in the field of human rights; establishment of a Special Bureau to Investigate Allegations Concerning Missing Persons; adoption of a draft law that introduced major reductions in the detention period; and a plan to establish a committee to monitor the implementation of all these measures and to bring proposals to the government. Information related to the functioning of the Missing Persons Bureau included that: in order to facilitate investigations and receive applications, the Bureau is open 24 hours a day; a mobile centre for the investigation of disappeared persons was established within the bureau in order to facilitate speedy processing of applications concerning alleged disappearances; and an intensive public information campaign was carried out in order to make the Bureau and the mobile centre widely known.

The WG acknowledged that recent legislation reduced the period of administrative detention and lifted the state of emergency in a number of provinces, but stated that the state of emergency in the remaining provinces was one of the causes for the continuing occurrence of enforced disappearances. Impunity was identified as another root cause.

**Extrajudicial, summary or arbitrary execution, Special Rapporteur on:** (E/CN.4/1998/68, paras. 12, 13, 14, 15, 17, 21, 29, 30, 32, 34, 39, 44, 57, 61, 68, 70, 71, 114; E/CN.4/1998/68/Add.1, paras. 381–395)

The Special Rapporteur (SR) noted that violent acts committed by terrorist groups do not fall within his mandate, but nonetheless acknowledged that violent acts committed by such groups have led to the killing of many civilians in Turkey. The SR expressed repugnance at terrorists' acts which claim the lives of a large number of innocent civilians, and cautioned that counter-insurgency strategies adopted by government — aimed at targeting those suspected of being members, collaborators or sympathizers of those groups — should not lead to further violations of the right to life.

The SR referred to information indicating that in the context of the conflict between the Turkish authorities and the PKK, extrajudicial, summary or arbitrary executions continued to occur. According to the reports received: women and children have not been spared by either side in the conflict; since the conflict started thousands of villages have been destroyed and over 2 million persons displaced; methods used to empty villages have reportedly included killings, disappearances, sexual violence, devastation of fields, and destruction of food stocks; and, during the first four months of 1996, 69 villages in the province of Sivas and approximately 100 in the province

of Erzurum were reported to have been evacuated. Information was received concerning human rights abuses, including killings, committed by members of the PKK and other armed opposition groups, such as the Turkish Revolutionary Communist Party and the Turkish Liberation Army of Peasants and Workers.

Urgent appeals were sent to the government on behalf of persons who had allegedly received death threats. The first involved the headman of Yesilyurt village, who filed a petition with the European Commission of Human Rights for ill treatment inflicted by Turkish security forces on villagers in 1989, and villagers who acted as plaintiffs and witnesses in the case. The second appeal was sent on behalf of the President of the Diyarbakir Branch No. 2 of the Tes Is, the Turkish Union of Energy, Water and Gas Workers, after he had received death threats. The third appeal was on behalf of an Iranian asylum seeker who was reportedly to be returned to Iran because he had failed to register as an asylum seeker within five days of arrival. Fears were expressed that, if returned to Iran, he would be at grave risk of extrajudicial, summary or arbitrary execution because he was sought by the authorities for distributing pamphlets produced by the organization Iranian People's Fedayan. The government informed the SR that the person named had been granted refugee status in Spain.

In addition to the appeals, allegations regarding the violation of the right to life of 23 persons were transmitted related to deaths in custody, killings by police, killings by members of the armed forces, killings by village guards, and killings by members of the Special Operations Team.

The government replied to allegations transmitted during 1996, as well as to urgent appeals and allegations transmitted during 1997, variously stating: the case was sub judice and the person named had died as a result of a wound caused by a gun which exploded during a struggle between him and a police officer; 11 persons had died in an attack by members of the PKK on the minibus in which they were travelling, the deaths had occurred during clashes with the police during an operation conducted against the PKK; no information was found on the incident reported and no village by the name given existed; the cases were under investigation; the person named had been armed and carried documents of the Revolutionary People's Liberation Party/Front and was killed when he disregarded warnings by three pursuing police officers; a clash took place between persons in the Bayram house and police officers who were planning to search the house, and the clash was stopped by an explosion in the house after which the three persons were found dead; the person named had been killed by members of the PKK, and the case was referred to the Diyarbakir State Security Court.

#### **Freedom of opinion and expression, Special**

**Rapporteur on:** (E/CN.4/1998/40, paras. 55, 102–106)

Concerning women and freedom of expression, the Special Rapporteur (SR) referred to two cases. The first

involved a woman who was allegedly detained shortly after stating on television that her daughter had been raped while in police custody in Ankara. The second case involved a woman who was allegedly arrested and detained after having publicly stated that she had been sexually assaulted and tortured during a previous period of detention.

In October 1997, in a joint initiative with the Special Rapporteur on the independence of judges and lawyers, the SR conveyed concern to the government over a case in which a lawyer, writer, and doctor of philosophy who had allegedly made a speech at a meeting organized by the Istanbul Human Rights Association to commemorate Human Rights Day and was sentenced to 10 months' imprisonment for "separatism" under article 8 of the Anti-Terror Law in late 1995. The report notes that the sentence was upheld by the Court of Appeal and the person was also obligated to serve the remainder of a previous sentence when an appeal failed.

The government replied that the person was a writer and lawyer, and also member of the THKPC (Revolutionary Pioneers of the People), an illegal terrorist organization. The government stated that he had been sentenced to life imprisonment for having violated several articles of the Turkish Penal Code, including incitement to robbery by use of force and incitement to pillage. The government noted that he was released in November 1997 on health grounds, the decision to release him was not an amnesty, the sentence was suspended for one year, and the duration of this suspension is subject to the discretion of the Chief Public Prosecutor.

The SR expressed concern over the sentence to 10 months' imprisonment under article 8 of the Anti-Terror Act for a speech given on Human Rights Day. The SR welcomed the Parliament's adoption of an amnesty law in August 1997, suspending the sentences of editors who had been held legally responsible and convicted for published materials and articles that appeared in their newspapers, and noted that the law had resulted in the release of the former editor of the pro-Kurdish daily *Ozgur Gundem*, and others. Reference is also made to a study that was initiated by the Human Rights Coordinating High Committee to amend articles 26, 27 and 28 of the Constitution, articles 159, 311 and 312 of the Turkish Penal Code and article 8 of the Anti Terror Law, with a view to broadening the freedom of thought and expression.

#### **Independence of judges and lawyers, Special**

**Rapporteur on:** (E/CN.4/1998/39, paras. 14, 15, 18, 19. 168–174)

An urgent appeal was sent to the government on behalf of 25 lawyers who had been brought to trial on charges relating to one or more of the following situations: conducting defences before the State Security Court, in which case they are equated with the defendants' cause and, as such, are termed "terrorist lawyers" by the police, the public prosecutors, and the courts; appearing in trials before the State Security Courts in cases of torture and

extrajudicial killings, and who have been qualified as "public enemies"; publicly commenting on the human rights practices of Turkey; and commenting on the Kurdish situation. Information indicated that the lawyers were tried under emergency legislation, had suffered economic sanctions and/or were pressured, harassed, tortured, or became the target of "unknown perpetrator" killings.

A second urgent appeal was sent on behalf of a lawyer and Vice-President of the Turkish Human Rights Association (IHD) and President of its Diyarbakir branch, who was detained and interrogated under the threat of torture. Information indicated that the Diyarbakir IHD office had been searched and magazines, books, and correspondence confiscated. It was alleged that the lawyer had been detained solely on account of his work as a human rights advocate.

A third appeal was sent on behalf of a judge who resigned from a case in November 1997 because of alleged intense pressure to influence the case from some foreign and Turkish institutions and politicians. The judge was presiding over the trial of nine police officers who were charged with the death of a "leftist" journalist. The government replied that the judge had asked to resign as he claimed to be under pressure from public opinion, the media, the press and other circles, including some political parties. He also claimed that he had been receiving letters and telephone calls from Istanbul, Ankara, and Australia, and that he had been hurt and disturbed by local and foreign reports that he had been bribed. The government added that the judge had declared his unwillingness to continue to preside over the trial as he had not been in a position to maintain his impartiality. The judge's request to be excused from the case was being considered by the Sandikli High Criminal Court. The SR noted that it was not clear what steps the government had taken to protect the judge from inappropriate and unwarranted interference with the judicial process, as provided in principle 4 of the UN Basic Principles on the Independence of the Judiciary.

The SR also intervened in the case of the lawyer, writer, and doctor of philosophy (see under "freedom of opinion and expression").

**Religious intolerance, Special Rapporteur on:** (E/CN.4/1998/6, paras. 24, 28, 48, 50, 63, 64, 69, 92, 95)

Referring to the importance that the Special Rapporteur attaches to in-country visits, the report notes that the government had not yet responded to a request for an invitation to visit. The SR stated that there are issues in Turkey which need to be examined in depth as soon as possible.

The report refers to violations of freedom of religion and belief against Christianity including controls on, or interference in, religious activities. Reference is also made to decision by one municipality to expropriate part of a Christian cemetery in order to widen a road despite

opposition by a Christian church. Information indicated that some graves were desecrated during the work.

In its replies to allegations transmitted, the government stated that the Bishop who had been named had been convicted by the courts because he had conducted an Easter service at the Bulgarian Orthodox Church of Saint Stephen in Istanbul against the will and wishes of the priest at that church. The sentence of five months' imprisonment and a fine of 250,000 Turkish pounds had been suspended on account of the accused's promise not to repeat such action in future.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, paras. 187-193; E/CN.4/1998/38/Add.1, paras. 423-445)

Reports continued to be received of the widespread use of torture in Turkey, including that inflicted upon a significant number of children. According to information, torture was practised against most persons interrogated by the Anti-Terror Branch of the police and the gendarmerie, as well as against many persons detained by the police in ordinary criminal cases. Torture was reportedly administered to extract "confessions", to obtain information, to intimidate detainees into becoming police informants, or as informal or summary punishment for petty offences, or suspected sympathy for illegal organizations. The most common methods, sometimes used in combination, included: administration of electric shocks; hanging by the arms in a variety of positions, including with the arms behind the back ("Palestinian hanging"); spraying with high-pressure water; sexual abuse, including squeezing of the testicles or breasts; beatings with fists, night sticks or sandbags; blindfolding; being stripped naked; and being exposed to extreme temperatures. Much of the most severe torture was said to occur in the early days of detention, so that by the time a detainee appeared in court or underwent a physical examination, there would remain little or no physical evidence that torture had taken place.

The government provided information on the law concerning the protection of persons in detention, which was adopted in March 1997. The law: aims to reduce maximum periods of detention to a level compatible with European and international standards; requires a detainee to be brought before a magistrate within 24 hours of arrest; requires public prosecutors, if they wish to prolong the detention in order to conclude investigations, to obtain the consent of the magistrate; stipulates that for crimes falling within the jurisdiction of the State Security Courts, the period within which the suspect must be brought before a judge is 48 hours although this period may be prolonged for up to four days if there are difficulties in collecting evidence, or for other similar reasons; stipulates that any further extension may only be obtained with the permission of the judge, up to a maximum of seven days, with the exception of regions under the state of emergency where the judge may extend the period up to 10 days; limits the jurisdiction of the State Security Court to crimes against the integrity and authority of the state; allows a judge to withhold infor-

mation from the detainee if this is considered "appropriate", at least until a public case is begun; and, allows a judge or a substitute to be present during the meeting with the lawyer if required by the cause of arrest.

The cases transmitted to the government involved arrest and/or detention followed by torture or ill treatment against, *inter alia*: a learning-disabled person who failed to produce his identity card at a gendarme check-point; a 16-year-old female and her brother, who were reportedly taken from their home in Ankara to the Anti-Terror Branch of Ankara police headquarters, noting the government's statement that both were temporarily detained for questioning in connection with communist activities and medical reports that had established that neither had been subjected to torture or ill-treatment; 12 transvestites who were detained at Beyo lu police headquarters; a 15-year-old girl and five fellow students who were detained, held incommunicado, tortured for some 12 days, and subsequently charged with membership of an illegal organization, noting the government's statement that a total of 15 persons had been arrested as part of a security operation against communist activities, and an official complaint raised by the girl had given rise to a public case against five police officers on the grounds of torture and ill-treatment; a 16-year-old female, noting that three separate medical reports established she had been subjected to torture or ill-treatment during her detention and that an investigation had been opened following her official complaint of torture; a 13-year-old-boy and his brother, from Mersin, who were detained in connection with a bag-snatching incident; a 15-year-old girl and her father, noting the government's statement that she had been detained during a security operation and a medical report had established that she had not been subjected to torture; and the deaths of 11 prisoners and injuries to 24 others during disturbances at Diyarbakir E-type prison, noting the deaths were allegedly caused by blows to the head administered by rapid-intervention police, military forces and prison guards wielding clubs, baseball bats, and sticks with nails.

Urgent appeals were sent to the government related to, *inter alia*: detention arising from a raid on the premises of Komol Publishing House by officers of the Anti-Terror Branch of Istanbul police headquarters, noting the government's statement that the persons named had been arrested in connection with a search for terrorist propaganda and were not subjected to torture or ill treatment during their detention; some 26 persons reportedly detained during police operations in Istanbul, followed by incommunicado detention at the Anti-Terror Branch of Istanbul police headquarters; detention of a couple at Ankara airport on terrorist charges; detention of six senior members of the Human Rights Association (IHD), as well as three senior members of the Diyarbakir branch of Eitim-Sen (teachers' trade union), noting the government's statement that they were detained following authorized searches of their premises, had been released following interrogation, and medical reports had established that none had been subjected to torture or ill treat-

ment; and, 28 persons from Çnarönü village who were reported to have been held in unacknowledged detention in an unknown location by gendarmes from ürgücü gendarmerie station.

The government also provided information in response to cases previously transmitted.

#### **Toxic wastes and products, Special Rapporteur**

**on:** (E/CN.4/1998/10, para. 31; E/CN.4/1998/10/Add.1, "Comments received from States")

Information provided by the government stated, *inter alia*: Turkey became a party to the Basel Convention in September 1994, resulting in adoption of a by-law on the control of dangerous wastes; the by-law establishes the administrative and technical requirements for the management of dangerous wastes; within this framework, dangerous waste cannot be imported nor can it be moved into Turkey for dumping; permits may be issued for the movement of certain types of scrap metal and other wastes which can be used as fuel or research material; and, Notification No. 97/3 on "Products subject to control for the protection of the environment" regulates the monitoring of traffic of wastes into Turkey as well as the implementation of the notification procedures in accordance with the Basel Convention and the "By-Law on the Control of Dangerous Wastes".

The government also replied to concerns raised in the Special Rapporteur's report to the 1997 Commission on Human Rights (E/CN.4/1997/19) regarding air quality. The government stated that the sulphur dioxide and nitrogen oxide emissions from the three power plants in the Mula region are not toxic emissions and are classified as air pollutants. The government stated that various analyses have shown that the emission of these pollutants by these plants is within permissible limits. Under the By-law on the Protection of the Quality of the Air, flue gas desulphurization facilities were planned for the three plants in order to limit toxic emissions to the level required by law. The government noted that until the desulphurization facilities start functioning, careful analyses of emissions will be conducted, the measurements considered by the Local Environment Board and necessary measures taken when the required levels are violated, in order to prevent possible damage during the operation of the power plants.

With regard to the allegation related to the discharge of 700 tons/year of uranium, the government stated that, on the basis of an analysis conducted of radioactivity, the allegation lacked any scientific credibility and there was no evidence to prove the accuracy of allegations that the incidence of certain diseases is on the rise among the inhabitants of the area as a result of high radioactivity levels.

#### **Violence against women, Special Rapporteur**

**on:** (E/CN.4/1998/54, Section III.D)

The report refers to the case of a 33-year-old woman lawyer who was forcibly taken from her home and detained by security forces in Ankara, and information

indicating that she was severely tortured and coerced into signing a statement implicating herself in several bombings. After an allegedly unfair trial, she was sentenced to 30 years' imprisonment for illegal membership in the Kurdish Workers' Party (PKK), throwing explosives and separatism. The report notes that in addition to being verbally abused and threatened with death, the woman was sexually assaulted repeatedly and threatened with rape. Her arrest and subsequent torture occurred after she accepted, and then investigated, a case involving the suspicious death of a person of Kurdish background in which state involvement had been alleged.



## UNITED KINGDOM

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** The United Kingdom has submitted a revised core document (HRI/CORE/1/Add.5/Rev.2) for use by the treaty bodies. The report prepared by the government contains demographic and statistical data as well as detailed information on the general political structure, the organization and functioning of the judicial system in a multi-jurisdictional state and the legal framework for the protection of human rights. The U.K. does not have a bill of rights or written constitution. Under the constitutional arrangements, the possession of rights and freedoms is an inherent part of being a member of society. Rights, therefore, are not conferred by the government; they already exist unless Parliament decides that the needs of society are such that they should be restricted in some specific way.

With regard to remedy for violations by the state, the Criminal Cases Review Commission (1997), a body independent of the executive, is one of the mechanisms through which alleged miscarriages of justice can be reviewed by the courts. Human rights are safeguarded through the work of a number of specialized bodies established by statute, including the Equal Opportunities Commissions, the Commission for Racial Equality, the Office of the Parliamentary Commissioner for Administration ("the Ombudsman"), the Office of the Data Protection Registrar, the Police Complaints Authority, and the Independent Commission for Police Complaints for Northern Ireland. Also in Northern Ireland are the Independent Assessor of Military Complaints Procedures and the Standing Advisory Commission on Human Rights. International human rights treaties to which the U.K. is party are not self-executing and the courts interpret only those laws made by Parliament and those parts of European Community law which have direct effect within Community member states.

The core document prepared by the U.K. government on its overseas dependent territories and Crown dependencies (HRI/CORE/1/Add.62) includes information on Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands, Isle of Man, Bailiwick of Jersey, and Bailiwick of Guernsey. In addition to statistical data, each entry summarizes information on the system of government, the law and the general legal framework for the protection of human rights.

### Economic, Social and Cultural Rights

Signed: 16 September 1968; ratified: 20 May 1976.

The U.K.'s fourth periodic report is due 30 June 1999.

*Reservations and Declarations:* Paragraph (a) (i), article 7; paragraph 3, article 2; article 6; paragraph (a) (i), article 7; article 9; paragraph 2, article 10; paragraph 2, article 13; and article 14.

### Civil and Political Rights

Signed: 16 September 1968; ratified: 20 May 1976.

The U.K.'s fourth periodic report for Jersey, Guernsey and Isle of Man has been submitted (CCPR/C/95/Add.10) but is not yet scheduled for consideration; fifth periodic for the U.K. is due 18 August 1999.

*Reservations and Declarations:* Paragraph 3 (d) of article 14; paragraph 4 of article 23; paragraphs (2) (b) and (3) of article 10; paragraph (2) (a) of article 10; article 11; paragraph 1 of article 12; paragraph 4 of article 12; paragraph 3 (d), article 14; article 20; paragraph 3, article 24; declaration under article 41.

### Racial Discrimination

Signed: 11 October 1966; ratified: 7 March 1969.

The U.K.'s 15th periodic report was due 6 April 1998.

*Reservations and Declarations:* Paragraphs (a), (b) and (c), article 4; and articles 6, 20 and 15.

### Discrimination against Women

Signed: 22 July 1981; ratified 7 April 1986.

The U.K.'s third periodic report (CEDAW/C/UK/3; CEDAW/C/UK/3/C/Add.1; CEDAW/C/UK/3/Add.2) has been submitted and is scheduled to be considered at the Committee's January 1999 session; fourth periodic report is due 7 May 1999.

*Reservations and Declarations:* General declaration; paragraph 4 of article 15; article 9; article 11; paragraph 5 of article 15; and, paragraph 1 (f) of article 16.

### Torture

Signed: 15 March 1985; ratified: 8 December 1988.

The U.K.'s third periodic report (CAT/C/44/Add.1) was considered at the Committee's November 1998 session; the fourth periodic report is due 6 January 2002.

### Rights of the Child

Signed: 19 April 1990; ratified: 16 December 1991.

The U.K.'s second periodic report (CRC/C/41/Add.7) has been submitted but is not yet scheduled for consideration by the Committee; the initial report for the Isle of Man

has been submitted (CRC/C/11/Add.19) and is scheduled for consideration at the Committee's May 2001 session; the third periodic report is due 14 September 2004.

*Reservations and Declarations:* General declaration; article 32; and paragraph (c) of article 37.

## REPORTS TO TREATY BODIES

### Committee against Torture

The United Kingdom's third periodic report (CAT/C/44/Add.1, April 1998) was considered by the Committee at its November 1998 session. The report prepared by the government is in three parts. Part I addresses the situation in the U.K., Part II deals with Guernsey, Jersey and the Isle of Man, Part III reviews relevant points in the Overseas (formerly dependent) Territories — Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and the Turks and Caicos Islands. Information is provided on measures taken in response to the Committee's recommendations following consideration of the second periodic report. Information is also provided on, *inter alia*: plans to reform the Offences Against the Person Act 1861, and some other legislation including the Criminal Justice Act 1988; extradition and asylum procedures, the Asylum and Immigration Act 1996, the Special Immigration Appeals Commission Act 1997; human rights training and retraining for prison officers, asylum caseworkers, Immigration Service staff and police, including the police in Northern Ireland; monitoring the use of police powers and procedures; counter-terrorism and emergency provisions legislation; the status of holding centres in Northern Ireland; audio- and video-recording of police interviews; access to legal advice, the Code of Practice for the detention, and treatment and questioning of persons by police officers; the right to silence; measures to prevent ethnic discrimination; deaths in police custody and use of restraint procedures; the private security industry; military powers in Northern Ireland; the Prison Services and conditions in prisons; procedures of the Immigration Service; detention under Mental Health powers; discipline and complaints with regard to the police, the military in Northern Ireland, prison staff and the Immigration Service; compensation for victims of crime; corporal punishment, and the care and protection of children.

The Committee's concluding observations and comments (CAT/C/UK) welcomed, *inter alia*: enactment of the Human Rights Act, 1998 and the Immigration Commission Act, 1998; the "Peace Process" in Northern Ireland, pursuant to the Good Friday Agreement; and the removal of corporal punishment as a penalty in several of the Overseas Territories. The continuation of the state of emergency in Northern Ireland was noted as a factor hindering implementation of the Convention.

The subjects of concern identified by the Committee included, *inter alia*: the number of deaths in police custody and the apparent failure of the government to provide an effective investigative mechanism to deal with

allegations of abuse by police and prison authorities and to report publicly in a timely manner; the use of prisons as places in which to house refugee claimants; the retention of detention (holding) centres in Northern Ireland, particularly Castlereagh Detention Centre; the rules of evidence in Northern Ireland that admit confessions of suspected terrorists upon a lower test than in ordinary cases and permit the admission of derivative evidence even if the confession is excluded; conflict with the Convention in provisions of the Criminal Justice Act 1988 and the State Immunity Act, 1978; the continued use of plastic bullet rounds as a means of riot control; and the dramatic increase in the number of inmates held in prisons in England and Wales over the last three years.

The Committee recommended that the government, *inter alia*:

- ♦ close detention centres, particularly Castlereagh, at the earliest opportunity;
- ♦ reform the State Immunity Act, 1978, to ensure that its provisions conform to the obligations contained in the Convention; reform Sections 134 (4) and 5 (b) (iii) of the Criminal Justice Act, 1988, to bring them into conformity with the obligations contained in article 2 of the Convention;
- ♦ abolish the use of plastic bullet rounds as a means of riot control;
- ♦ reconstruct the Royal Ulster Constabulary so that it more closely represents the cultural realities of Northern Ireland, as part of an extensive programme of re-education for members of the Royal Ulster Constabulary directed at the objectives of the Peace Accord and the best methods of modern police practices; and
- ♦ in the case of Senator Pinochet of Chile, refer the matter to the office of the public prosecutor, with a view to examining the feasibility of, and if appropriate, initiating criminal proceedings in England, in the event that the decision is made not to extradite him.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Extrajudicial, summary or arbitrary execution, Special Rapporteur on:** (E/CN.4/1998/68, paras. 16, 17, 90; E/CN.4/1998/68/Add.1, paras. 404–408)

The Special Rapporteur (SR) notes that communications were sent to the government concerning several cases. On the issue of fair trial in death penalty cases, the report refers to the 1993 judgement of the Privy Council which held that awaiting the execution of a death sentence for five years after it had been handed down constituted in itself cruel and inhuman punishment. The report notes that in October 1996, the Privy Council ruled that, in the Bahamas, it may be considered cruel or inhuman to exe-

cute a prisoner who has been on death row for more than three and a half years. The Privy Council was of the view that the five-year ruling was not to be regarded as a fixed limit applicable in all cases, but as a norm which may be departed from if circumstances require. The SR repeated his concern that such decisions might encourage governments to carry out death sentences more speedily, which, in turn, might affect defendants' rights to full appeal procedures.

The cases referred to the government related to a death in police custody and the apparent failure either to discipline the officers involved or prefer charges and the killing of three members of the Irish Republican Army by members of the British armed forces in Gibraltar in March 1988. The SR had requested information from the government on the steps it has taken in response to the 1995 judgement by the European Court of Human Rights on this case (see *McCann & Others v. the United Kingdom*, 27.09.1995).

The SR also requested from the government further clarification with regard to the inquest procedure in the United Kingdom and, in particular, the differences in this procedure between England and Wales, and Northern Ireland. The questions raised by the differences included: what the verdict of "unlawful killing" was in England and Wales; what was the function of an inquest if not to express opinions on matters of civil and criminal liability; why the differences between the inquest procedure in England and Wales, and Northern Ireland were considered to be of a procedural nature; and what were the reasons for maintaining differences between the two procedures.

**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/1998/39, Section III; E/CN.4/1998/39/Add.4)

The main report notes that communications were sent to the government and a reply was received. No details of the case(s) were provided.

The Special Rapporteur (SR) conducted a field mission to the United Kingdom from 20 to 31 October 1997. The visit was planned with a primary focus on allegations received over several years related to: abuse of defence lawyers in Northern Ireland by some police officers since 1992, as well as similar abuse, although to a lesser degree, in England; and concern over a number of provisions restricting access to legal advice, including deferrals of access to a solicitor for periods of up to 48 hours under emergency laws, refusal to allow solicitors to remain present during police interviews in holding centres in Northern Ireland, and closed visits for the purpose of legal consultations for certain prisoners in England.

Additional issues taken up by the SR during the visit were: the absence of safeguards to prevent abuse of lawyers, such as video and audio-recording of police interviews; the unresolved murder of Belfast lawyer Patrick Finucane, in which it was claimed there had been official collusion; provisions in emergency legislation (e.g., absence of a jury, a lower threshold for admissibility

of confession evidence) and in ordinary criminal law (e.g., the abrogation of the right to silence) which infringe on the ability of the judiciary to function impartially and independently; and provisions of the Police Act which do not exempt lawyers' offices from "bugging" and thereby undermine the lawyer/client privilege.

The report of the mission (E/CN.4/1998/39/Add.4) contains specific information on, *inter alia*: intimidation and harassment of lawyers, deferrals of access to counsel, the right to have a lawyer present during police interrogations, closed visits, video and audio recording of police interviews, the right to remain silent, admissibility of confession evidence, the Diplock Courts, "bugging", and incorporation of the European Convention on Human Rights into domestic legislation.

The report notes that the emergency legislation enacted to combat terrorism in Northern Ireland included measures giving the Royal Ulster Constabulary (RUC) extraordinary police powers to stop, question, search, arrest, detain, and interrogate anyone merely suspected of terrorist activity. The report further notes that, in fact, emergency legislation has been in force in Northern Ireland since partition in 1922. The legislation with the greatest effect in force at the time of the SR's visit was the Northern Ireland (Emergency Provisions) Act 1996 (EPA), and the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA).

On the issue of intimidation and harassment of defence lawyers, the report notes that the tactics have been used particularly against those representing individuals accused of terrorist related offences. The abuse was reported as taking various forms, ranging from mild forms of harassment (e.g., the lawyer kept waiting to see the client) to interference in the solicitor/client relationship (such as, by telling the detainee that the lawyer is not interested in him or her, the lawyer's advice should be ignored, the lawyer is representing the paramilitaries and not the client), to physical abuse and/or death threats. The SR stated that many of the lawyers interviewed referred to the harassment and intimidation as an occupational hazard that they have come to expect and accept, noting that in the absence of audio-recording there is only hearsay evidence to prove the allegations, that is, the word of the client against that of the RUC officer. Consequently, most lawyers stated that they find it futile to file a complaint, particularly in light of the fact that any investigation will be carried out by the RUC itself, a process in which they have no confidence.

The allegations were refuted by the Chief Constable of the RUC on the basis that: there is a lack of evidence to substantiate the allegations, and further, there were hardly any complaints made by lawyers; lawyers have not sought judicial review of detentions on grounds of harassment and intimidation; the greatest degree of respect is shown to lawyers and, consequently, there could be no possible benefit for a police officer to make a disparaging comment or threat; and numerous safeguards have been put in place to prevent such abuse — including the use of closed circuit televisions which must

be monitored during the entire interrogation by a uniformed officer, the presence of a doctor who is available upon the request of the detainee, and the appointment of the Independent Commissioner. The RUC also stated that there is an agenda driven by paramilitary organizations to ensure that detainees remain silent, with solicitors possibly conveying this message to detainees, and part of the political agenda is to portray the RUC as belonging to the unionist tradition, with allegations concerning police intimidation and harassment of solicitors reflecting this political agenda. In response, the report emphasizes that no evidence was presented to the SR to support allegations that lawyers were acting on behalf of paramilitaries or involved in any complicity with a crime. The SR expressed concern that the RUC had in fact identified lawyers, who represented those accused of terrorist related offences, with their clients or their clients' causes, and that the RUC had interfered in the attorney/client relationship by questioning, during the course of interrogations, the integrity and professionalism of lawyers.

The role of the Independent Commission for Police Complaints (ICPC) is considered, with the report noting that: the ICPC has come under severe criticism because of its limited powers; the ICPC cannot initiate investigations but only supervise those referred to it by the Secretary of State, the Police Authority, or the Chief Constable; this supervisory authority is limited insofar as a member of the Commission may only make suggestions to the assigned RUC officer about how an investigation should proceed, but cannot take direct action; if the investigation is considered inadequate, the ICPC can only withhold a statement of satisfaction; of the 16,375 complaints received by the ICPC through 1994, not one resulted in any disciplinary sanction against any RUC officer; the ICPC 1996 report indicated that during 1996 the Chief Constable notified the Commission of 2,540 new cases of complaint and that in only 10 cases — involving 39 charges and 10 officers — were disciplinary charges made; and in only one case was an RUC officer found guilty of abuse of authority.

The report notes that in response to criticisms of the manner in which police complaints were handled, the government authorized an independent review of the system in Northern Ireland. The review recommended that: the position of Police Ombudsman be established, responsible to Parliament, with the duty to investigate complaints and to report the findings; the post should be filled by a judge or a person of the quality and experience of a senior judicial figure; the Ombudsman would recruit a staff which would include investigators, lawyers, and people with police experience and others; the Ombudsman would investigate complaints against police even where the action complained about amounted to criminal behaviour; and all complaints about the police and not just those on conduct, should be made through the Ombudsman in the first place. The government responded favourably to the recommendation that the post be created and, at the time of the SR's visit, the draft Police (Northern Ireland) Bill was pending submission to Parliament. If adopted, the report notes, the Police

Ombudsman would replace the Independent Commission for Police Complaints.

In the section dealing with access to counsel, the report notes that section 14 of the PTA, provides that a person who has been arrested may be detained for up to 48 hours with the possibility of extending this initial detention period for up to five days upon authorization by the Secretary of State. Further, section 47 of the EPA, provides that a detainee has the right to see a lawyer, but access can be deferred for up to 48 hours if a senior police officer reasonably believes that such access will interfere with the investigation, alert other suspects, or hinder the prevention of an act of terrorism. This initial deferral of access can be renewed for further periods of up to 48 hours, although renewal of the deferral is rare. With regard to the right to have a lawyer present during police interrogations, the report notes that, in practice, solicitors have not been permitted by the RUC to be present at any stage during interrogations. Following on this, the report cites the case of *In re Charles Begley's Application* in which the High Court ruled that those detained under emergency laws have no right to have a solicitor present during interrogations and that no exceptional circumstances existed which warranted the exercise of discretion on the part of the RUC to allow the solicitor to be present. On appeal, the House of Lords held that a person arrested in Northern Ireland under section 14 of the PTA had no right to be accompanied and advised by his solicitor during interviews with the police. In its decision, the House of Lords pointed out that a suspect detained under the terrorism provisions was merely entitled to consult privately with a solicitor under section 47 of the EPA. Further, the Code of Practice, issued under section 61 of the 1991 Act, was to the same effect. Nowhere was there reference to any right for a person arrested under terrorism provisions to have a solicitor present during interview.

On the issue of closed visits, the report addresses a number of points, including that: in England and Wales, but not Northern Ireland, the Home Office instituted a policy under which certain prisoners are designated as exceptional high risks of escape and are allowed legal visits in prisons only where the prisoners are separated from lawyers by a transparent screen; in these cases, lawyers are searched several times as they enter and exit SSUs (Special Secure Units); prisoners are strip-searched before and after visits, despite the fact that they had no contact with their lawyers or anyone apart from the prison staff; documents are exchanged between the solicitor and client by means of an x-ray screening machine to ensure that no unauthorized materials are passed between the two; a prison guard remains just outside the sound proof room to monitor the visit (by sight not sound); trial preparation is extremely difficult under these conditions because of problems related to the examination of documents by lawyers and clients jointly and confidentially; it is very difficult for lawyers to establish the relationship of trust and rapport with their clients that is necessary for them to prepare for the defence adequately; and although lawyers may request

an open visit if exceptional circumstances warrant, there is a belief among them that the decisions by the authorities concerning such requests are arbitrary and irrational. The report notes that during the visit to the U.K., the Chief Inspector of Prisons indicated to the SR that closed visits would soon be discontinued.

On provisions in emergency legislation and ordinary criminal law that impinge on the ability of the judiciary to function independently, the report refers to three main points: abrogation of the right to silence, the lower threshold for admissibility of confession evidence, and the absence of a jury.

With regard to the right to remain silent, the report notes that the Criminal Evidence (Northern Ireland) Order 1988 and section 34 of the Criminal Justice and Public Order Act 1994, which extends the same legislation to England and Wales, permit a judge to draw adverse inferences from a detainee's silence in four circumstances: 1) when the defendants base their defence on a fact that they could reasonably have been expected to raise during police questioning, but did not; 2) when the accused fails to give the police an explanation for the presence of a nearby substance, object, or mark that could reasonably be believed to have a connection to a crime; 3) when defendants fail to account for their whereabouts at the time a crime was committed; and 4) if the defendant fails to answer questions at trial.

The report recalls that general principles of criminal law place the burden of proving guilt with the prosecution and article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR) establishes the right not to be compelled to incriminate oneself. With this in mind, the SR expressed the view that any means used by the state to exert undue influence upon a detainee to compel a confession of guilt is unacceptable and, in the case of the U.K. which is a state party to the ICCPR, a violation of article 14 of the Covenant.

Referring to issues related to the admissibility of confession evidence, the report notes that in Northern Ireland such evidence is admissible in cases scheduled under section 12 of the EPA unless the accused was subjected to torture, ill treatment or violence in order to induce a statement. The report further notes that in Northern Ireland the accused must present prima facie evidence of the torture, inhuman or degrading treatment, or violence, or threat to violence, while under the Police and Criminal Evidence (Northern Ireland) Order (PACE) there is a lower threshold for the admissibility of such evidence. In Northern Ireland, once the defendant makes this showing, the burden shifts to the prosecution to show that the confession was not coerced in the specified manner.

On the issue of the absence of a jury, the report refers to the so-called Diplock courts which were established by the government in Northern Ireland in which certain scheduled offences are tried, by a single judge, without a jury. The report states that the absence of a jury and the unique role that judges play in these cases (e.g., the infer-

ences that may be drawn if the accused remains silent) has altered the manner in which judges are viewed. In consequence, a large segment of the population of Northern Ireland view the administration of justice in such cases as not being independent and impartial and the SR stated that restoration of the jury system, which has been a culture within the criminal justice system in England, would help restore public confidence in the administration of justice.

A number of concerns related to the practice of "bugging" are addressed in the report, including that: Part III of the Police Act allows an operation to be approved if the authorizing officer believes that the action is likely to be "of substantial value" in the prevention or detection of serious crime and that the same value cannot be reasonably achieved by other means; legally privileged matters which are excluded from such actions include various communications between a professional legal adviser and the client, or any person representing that client, matters which are privileged as to their content, but which are in the possession of someone who should not have them, and matters held or communications made with the purpose of furthering a criminal purpose.

The report notes that the provisions in the Police Act and Code of Practice have been criticized on the basis that: the Act is narrowly drafted and deals only with the use of listening devices which interfere with "wireless telegraphy" or use of which necessitates trespass, thereby excluding such devices as sensitive microphones, or the "bugging" of communications in a police or prison cell; the Act does not define the additional criteria necessary for authorization of intrusive operations in which privileged communications are likely to be intercepted, and conditions that may be attached to such operations; the Code of Practice does not adequately explain the concept of legal privilege — for example, by failing to clarify a borderline case between a lawyer acting legitimately for a client suspected of a criminal offence, and the lawyer furthering a criminal purpose; and the Code fails to clarify the term "legal adviser" and does not explicitly provide for the destruction of legally privileged material.

The report notes that the concept of legal privilege is crucial to the independence of lawyers. On that basis the relevant provisions in the Police Act are viewed with concern particularly in light of the fact that under the Police Act for England and Wales the decision to authorize "bugging" of legal premises is made by a police officer, who most likely will not have the requisite training to appreciate the concept of legal privilege. The SR stated that such a decision should require prior authorization from a judicial officer.

The report concludes with a number of recommendations, including that:

- ♦ the authorities, preferably the proposed Police Ombudsman, conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland;

- ♦ the government provide the necessary protection and vigorously investigate the threats and bring to justice the guilty party in those cases where there is a threat to the physical integrity of a solicitor or barrister, irrespective of the source of the threat;
- ♦ both the Bar Council and the Law Society be more vocal in their defence of lawyers who have been subjected to such harassment and intimidation and enter into a dialogue with the RUC on how best to address the problem;
- ♦ lawyers themselves lodge formal complaints with the authorities;
- ♦ the RUC organize, as a matter of urgency and in conjunction with the Law Society and the Bar Council, training seminars for police officers to sensitize them on the important role that defence lawyers play in the administration of justice;
- ♦ the right to immediate access of counsel be respected and section 14 of the PTA be amended to prohibit deferral of access; the right to have a lawyer present during police interrogations be respected; the practice of closed visits in England and Wales be discontinued;
- ♦ the government install video and audio-recording equipment in all holding centres in Northern Ireland, as a matter of urgency, the tapes of such recordings be available to counsel upon request, and that the proposed legislation on this subject be speedily implemented once the legislation is passed by Parliament;
- ♦ the government appoint an independent judicial inquiry to investigate the outstanding questions that remain with regard to the murder of Patrick Finucane, and it invoke the provisions of the Commissions of Inquiry Act to facilitate this process;
- ♦ the right to silence be immediately reinstated and the Criminal Evidence (Northern Ireland) Order 1988 be rescinded;
- ♦ the permissive EPA standard for admitting at trial confession evidence procured by psychological pressure, deprivation, or other non-violent forms of coercion be abolished;
- ♦ the right to trial by jury be reinstated, with safeguards put into place to protect the integrity of jurors;
- ♦ Part III of the Police Act, which allows for actions "with respect to property and wireless telegraphy", viz., "bugging", be amended to ensure that privileged communications between an attorney and client are scrupulously respected;
- ♦ the government ensure that the Police Ombudsman, once established, be provided the necessary human and financial resources to carry out its mandate; and

- ♦ the government implement for the judiciary, training programmes on international human rights standards and the jurisprudence of international human rights bodies such as the Human Rights Committee and the European Court of Human Rights.

#### **Racism and racial discrimination, Special**

**Rapporteur on:** (E/CN.4/1998/79, paras. 32, 36, 108)

The Special Rapporteur referred to a March 1997 report on the British army indicating that deep-rooted racism prevails among the military, mainly aimed at Blacks. The report cites an April 1997 incident in which a young black soldier was attacked by 11 of his regimental colleagues, who ill-treated him supposedly to make him "clean and white". In August 1997, a senior officer was almost court-martialled for denouncing such discriminatory practices and acts in the army, where Blacks are systematically accused of laziness. The report notes that after finding that such practices did exist, the government launched a campaign in October 1997 against racism and racial discrimination in the areas affected. The report also cites a study on Islam in the United Kingdom which indicated a resurgence of intolerance against individuals belonging to the Muslim community.

The Special Rapporteur's (SR) interim report to the 1998 General Assembly (A/53/269, para. 36) notes that Parliament recently passed an act on race relations in Northern Ireland. The act fills a lacuna by prohibiting racial discrimination with respect to employment, training, education, housing and the supply of goods and services. The SR also noted that a bill making the denial of the Holocaust a criminal offence was thoroughly debated but not adopted.

#### **Sale of children, child prostitution, child pornography, Special Rapporteur on the:**

(E/CN.4/1998/101, paras. 18, 44, 50, 60, 77, 101)

The report notes plans to give courts new powers to ban paedophiles from playgrounds, school entrances, and other public places frequented by children. The bans will be put in place through the granting of community protection orders which will prohibit the convicted sex offenders from specified areas where they may be liable to re-offend. The Special Rapporteur also noted that sex offenders, who have been released from jail since 1 September 1997, are required to register their addresses with police.

In commentary on the participation of children in the media, the report refers to concerns that related to the screening of a drama documentary entitled "No Child of Mine" that portrayed a 10-year-old victim of repeated sexual abuse. The documentary was commended for bringing the subject into the public arena, but concerns were expressed for the psychological well-being of the 13-year-old actress who portrayed the victim and had to act out graphic scenes of rape. Concerns were also expressed that the film might become soft-porn material for paedophiles, and that the use of a child actor by the mainstream media could be regarded as a societal validation of their sexual misconduct.

Concerning the use of images of children in fashion and other industries, the report notes that members of the British Association of Photographers who work in advertising, fashion and publishing, have proposed the development of a code of practice governing the use of child models. The guidelines proposed recommended that: photographers should avoid taking pictures of children in their underwear; no child should ever go on a photographic shoot without a chaperone and the chaperone should remain in the same room as the child at all times; strict guidelines must be enforced as to the length of time children in different age groups may work and be kept waiting on location; and parents must be educated as to what constitutes acceptable modelling activities. On the last point the report notes that too many parents are so intent on getting their children photographed that they ignore the potential dangers of the situations in which their children are placed.

Referring to "helplines" and "hotlines" to allow victims to talk about their abuse, the report refers to the establishment of Childline, a permanent free telephone helpline that counsels an estimated 90,000 children and young people every year. The service offers children a free and confidential opportunity to speak about their problems. Callers may remain anonymous if they choose, and are not asked to name their abusers.

On the issue of media and the rights of the defendant, the report notes that the government is considering more effective ways of supervising sex offenders when they are released from prison and is in the process of setting up a national register of paedophiles. The number of sexual offenders in the U.K. is unknown but is estimated to be 110,000, most of them men. At the time the report was prepared the government had not responded to pressure from child rights groups and concerned parents to legislate in favour of community notification of the whereabouts of convicted offenders.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, para. 196; E/CN.4/1998/38/Add.1, paras. 447-448)

The report notes allegations that were transmitted to the government concerning arrest by soldiers of the Special Air Services (SAS) in South Armagh, Northern Ireland in April 1997 and reports that two of those arrested were beaten repeatedly and kicked by soldiers and one person had a gun placed inside his mouth. Reports indicated that one man required treatment in hospital following the incident. The government confirmed that both men had been arrested during a security operation as a result of which several persons were charged with serious terrorist offences and, further, that both men had made formal complaints that they were assaulted by soldiers and police officers at the time of arrest. The government informed the Special Rapporteur that the complaints were being fully investigated by the police in one case, and by the Independent Commission for Police Complaints in the other.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, paras. 54; E/CN.4/1998/10/Add.1, para. 2 and section "Comments received from States")

The report notes that among the countries of the Organization for Economic Co-operation and Development (OECD), the United Kingdom is one of the biggest waste exporters — including through legal exports of wastes for recycling programmes — with countries in Asia as the primary destinations.

The addendum to the main report summarizes the reply of the government to information contained in the Special Rapporteur's (SR) report to the 1997 session of the Commission on Human Rights (E/CN.4/1997/19). The government stated that concerns related to the operation of a toxic waste incinerator in Pontypool, South Wales, do not fall within the mandate of the SR since it does not involve an issue in which an African or other developing country is involved. With regard to information alleging environmental damage arising from the operations of British Petroleum (BP) in Colombia, insufficient detail was provided, making it impossible to investigate the truth or otherwise of the allegation. The same lack of detail was cited by the government in response to concerns over the export of battery scrap to the Philippines and of lead acid batteries to Indonesia for recycling. On questions arising from the operations of Imperial Chemical Industries (ICI), Malaysia, and allegations concerning the misuse of Gramoxone (paraquat) the government stated that the issues are outside the mandate of the SR as they do not involve the illicit traffic and dumping of toxic and dangerous products and wastes. The government stated that Gramoxone is approved for use as a herbicide by the Malaysian government and Zeneca, which replaced ICI Agrochemicals, undertakes extensive training for those involved in its distribution, storage and use. The specific plant referred to in the allegation in the 1997 report was sold to the Chemical Company of Malaysia in 1994 and therefore questions as to its operations are not matters upon which the U.K. government can comment. On questions arising from operations by Thor Chemicals, related to the import of spent mercury catalyst for processing in South Africa, the government stated that the company had informed the government that such shipments had been stopped in 1992. The government informed the SR that it had found no evidence to suggest that the company did not comply with relevant U.K. legislation on the shipment of dangerous goods and, further, that compliance of the working practices of Thor Chemicals SA (Pty.) Ltd. with health and safety legislation is a matter for the relevant authorities in South Africa. The government referred to a statement by the South African government declaring that the import of spent mercury catalyst into South Africa by Thor Chemicals was known and permitted by the South African government and there was no illicit dumping or trafficking. In light of this, the U.K. government noted that the allegation did not fall within the SR's mandate.

**Violence against women, Special Rapporteur on:** (E/CN.4/1998/54, Section III.B)

The report refers to a case in which the High Court addressed the issues of rape and gender-specific violence as a basis for asylum for citizens of Sierra Leone. The report notes that, although the case was dismissed, one of the Justices stated that if there was systematic rape as part of an envisaged policy of an organization or group within a country — that included rape as one of its activities — it would be a reason under the Convention on the Status of Refugees for granting asylum.

**Mechanisms and Reports of the Sub-Commission**

**Traditional practices affecting the health of women and girls, Special Rapporteur on:** (E/CN.4/Sub.2/1998/11, paras. 42–54)

The report refers to information provided by the government related to, *inter alia*: action taken by the Department of Health in favour of the black and ethnic minorities living in the U.K.; steps taken to improve the access of women and children, including girls, to health care; programmes directed towards the needs of women belonging to ethnic minorities, for example, a study to gain understanding of certain health problems experienced by Asian women, and to find solutions; inclusion of the questions of suicide and mental health in programmes to achieve the goal of “a healthier nation”; a large-scale survey of the current infant feeding practices in the Asian community which revealed a number of problems in the methods of infant feeding; and financial support by the Department of Health for a large number of black and ethnic minority community organizations, some of which are set up for women to address problems relating to domestic violence, suicides and children.

Concerning the issue of female genital mutilation (FGM), the government indicated that in 1980 it was discovered that female circumcision was practised in the U.K. by migrants and refugees from African countries. In 1985, legislation was enacted prohibiting female circumcision — any person who contributes in any way to the carrying out of this practice, or who has agreed to be its victim, has committed a punishable offence under this law. The government also referred to the Children’s Act of 1989 that entitled local authorities to intervene, if necessary, to prevent causing harm to children. The law does not allow parents to have their girl child undergo excision outside the U.K. unless this is with the consent of the courts. Since 1991, specific information on FGM has been provided to the local authorities, police, schools, the health authorities, the medical corps and a large number of organizations concerned with child welfare. The Department of Health has worked closely with the Foundation for Research on Women’s Health and Development, to identify a model for prevention of FGM.

The government also provided information on the Department for International Development and the policy adopted regarding traditional practices affecting the health of women and girls, including FGM. This

Department’s policy is aimed at persuading the countries where FGM takes place to adopt measures that will reduce it and eventually eliminate it. Financial and technical assistance are given to governments that have developed national programmes for the elimination of FGM, and support is provided to women wishing to develop awareness among the populations concerned.



## UNITED STATES OF AMERICA

**Date of admission to UN:** 24 October 1945.

### TREATIES: RATIFICATIONS AND RESERVATIONS

**Land and People:** The U.S. has submitted a core document (HRI/CORE/1/Add.49) for use by the treaty bodies. The report prepared by the government contains demographic and statistical data as well as commentary on the republican form of government, the executive, legislative and judicial branches of government and state governments. The report also includes information on the system of government in the District of Columbia, American Samoa, Puerto Rico, the United States Virgin Islands, Guam, and the Northern Marianas and notes that other U.S. dependencies include Wake Island (and Wilkes and Peale), Midway Islands, and various uninhabited atolls and islands in the Pacific region.

The section on the general framework for the protection of human rights includes information on the federal and state Constitutions, statutes, derogation and states of emergency, responsible authorities and remedies. In the United States, duly ratified treaties are the supreme law and equal with enacted federal statutes. Provisions of treaties may be displaced by federal law that is subsequently adopted to the extent of any inconsistency between the two.

#### Economic, Social and Cultural Rights

Signed: 5 October 1977.

#### Civil and Political Rights

Signed: 5 October 1977; ratified: 8 June 1992.

The U.S.’s second periodic report was due 7 September 1998.

*Reservations and Declarations:* Articles 7 and 20; 1 of article 15; paragraphs 2 (a) and (b) and 3 and of article 10; paragraph 4 of article 14; paragraph 1 of article 4; paragraph 5 of article 9; paragraphs 3 (b) and (d) and 6 of article 14; paragraph 3 of article 19; article 47; declaration under article 41.

#### Racial Discrimination

Signed: 28 September 1966; ratified: 21 October 1994.

The U.S.’s initial and second periodic reports were due 20 November 1995 and 1997 respectively.

*Reservations and Declarations:* Articles 4 and 7; paragraph 1 and subparagraphs (1) (c) and (d) of article 2; subparagraphs (1) (c) and (d) of articles 3 and article 5; article 22.

### **Discrimination against Women**

Signed: 17 July 1980.

### **Torture**

Signed: 18 April 1988; ratified: 21 October 1994.

The U.S.'s initial report was due 19 November 1995.

*Reservations and Declarations:* Articles 1, 3, 10, 11, 12, 13, 14 and 16; paragraph 1 of article 30; paragraph 1 of article 21.

### **Rights of the Child**

Signed: 16 February 1995.

## **THEMATIC REPORTS**

### **Mechanisms of the Commission on Human Rights**

#### **Arbitrary detention, Working Group on:**

(E/CN.4/1998/44, paras. 4, 5, 8, 19; E/CN.4/1998/44/Add.1, Opinion No. 6/1997)

The main report notes that various communications and appeals were sent to the government and that responses had been received. No details of the cases were provided.

Opinion No. 6/1997 related to a case referred to the government in 1996 and 1997, involving two individuals, Cuban nationals, who were allegedly deprived of their freedom for more than 10 years. The source further alleged that the two were being held because they are Cuban nationals, and stated that neither of them had been convicted for having committed a crime or a felony. The Working Group decided that the detentions were without legal basis on the ground that neither individual was brought to trial and no formal charges were laid.

**Extrajudicial, summary or arbitrary execution, Special Rapporteur on:** (E/CN.4/1998/68, paras. 12, 17, 20, 27, 60, 85, 87, 89, 91, 92; E/CN.4/1998/68/Add.1, paras. 413-418)

The report notes a number of cases that were transmitted to the government arising out of concerns related to the imposition and execution of the death penalty and possible failings in fully guaranteeing the right to a fair trial. One case involved a minor, a South African national, who was facing the death penalty in Mississippi; the government replied that the boy was no longer facing execution and had been sentenced to 35 years in prison for carjacking and accessory after the fact to murder. The Special Rapporteur (SR) also referred to information indicating that in the U.S. more than 60 foreign nationals have been sentenced to death without having been informed of their right under the Vienna Convention to receive assistance from their consulate.

The 11 urgent appeals that were transmitted concerned death sentences imposed in Arizona (1), Georgia (1), Mississippi (1), Missouri (3), Oregon (1), Texas (2) and Virginia (2). The individuals facing the death penalty reportedly were sentenced: after a trial that fell short of international fair trial standards, including the lack of adequate defence; without resort to the right to lodge a legal or clemency appeal; despite mental retardation; and despite being under 18 years of age at the time the crime was committed. The SR noted that seven persons on whose behalf appeals had previously been sent had been subsequently executed.

The government's reply to the SR's communications described the legal safeguards provided to defendants in criminal cases and, in particular, those specific to capital cases. On specific cases the government informed the SR that: a stay of execution had been granted to enable the courts to review the case and not on the basis of a claim of innocence which had been rejected by all 14 judges who had reviewed the case, noting that DNA testing had, in fact, shown a match between the victim's blood and the person charged with and convicted of the murder; execution was postponed indefinitely pending a hearing on the person's petition stating that he is incompetent to be executed; and, the person convicted had been executed as scheduled but not before an automatic appeal to the state Supreme Court had been concluded; the person convicted had been executed. With regard to the claim respecting the Vienna Convention on Consular Relations, the government stated that the Federal District Court Judge and the Federal Appeals Court found that the claim was barred by a failure ever to have raised the claim in state court and noted that the individual had pleaded guilty to murder and was represented by competent, retained counsel throughout the trial proceedings. The information provided by the government to previously transmitted cases indicated that the cases were under investigation by the Department of Justice, under investigation by the U.S. Attorney's Office in New York, and/or under investigation by the Civil Rights Division of the Department of Justice.

The SR visited the United States from 21 September to 8 October 1997 in response to persistent reports suggesting that the guarantees and safeguards set out in international instruments relating to fair trial procedures and specific restrictions on the death penalty were not being fully observed. The SR had also received information concerning discriminatory and arbitrary use of the death penalty, lack of adequate defence during trial and appeal procedures, executions of juveniles and mentally retarded persons, extension of the scope, and reintroduction of, death penalty statutes in several states, and deaths in custody or due to excessive use of force by law enforcement officials.

The report of the visit (E/CN.4/1998/68/Add.3) contains information on, *inter alia*: limitations set out in the International Covenant on Civil and Political Rights (ICCPR) on the imposition of the death penalty; reservations to the ICCPR by the United States and the position

of the Human Rights Committee; the general context of the death penalty in the U.S.; current practices in the application of the death penalty; the administration of the death penalty; the lack of awareness of international obligations relative to the U.S.; and deaths resulting from excessive use of force by law enforcement officials. The annex to the report reproduces a recommendation by the American Bar Association (ABA) which was approved by the ABA House of Delegates in February 1997.

Reviewing provisions in the ICCPR, the report recalls that the U.S. ratified the Covenant on 8 June 1992 — with reservations, declarations and understandings — and that the treaty entered into force on 8 September 1992. The report notes limitations imposed by article 6 of the ICCPR, including that: the death sentence can only be imposed for the most serious crimes, viz. as an exceptional measure for intentional crimes in which the intention was to kill; a death sentence can only be imposed following the strictest observance of the highest procedural safeguards; and a death sentence may not be imposed on minors and may not be carried out on pregnant women.

The commentary on the reservations filed by the U.S. to the ICCPR notes that a reservation has been entered to the death penalty provision of article 6, stating that the U.S. reserves the right, subject to constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below 18 years of age. The report notes that 11 States parties to the ICCPR objected to the reservation and, further, that the Human Rights Committee expressed concern that the reservation is incompatible with the object and purpose of the Covenant, partly on the basis that article 4 of the Covenant declares article 6 to be a non-derogable right, thereby placing a state which makes a reservation to the right to life under a “heavy onus”.

The report also refers to an understanding and several declarations made by the government related to the Covenant according to which: the Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered, and otherwise by the state and local governments; the provisions of articles 1 through 27 of the Covenant are not self-executing, i.e., the Covenant does not, by itself, create private rights directly enforceable in U.S. courts; and special legislation to give effect to the provisions of the ICCPR in domestic law is not necessary since the fundamental rights and freedoms protected by the ICCPR are already guaranteed in law, either by virtue of constitutional protections or enacted statutes, and can be effectively asserted and enforced by individuals in the judicial system on those bases. The report notes that in its concluding observations on the initial report of the U.S., the Human Rights Committee regretted the extent of the reservations, declarations and understandings to the Covenant as, taken together, they intended to ensure that the U.S. has accepted only what is already in its law.

The description of the general context for the death penalty sets out a number of points including, *inter alia*, that: forty jurisdictions have death penalty statutes; information indicated that 3,269 persons were on death row, with more than 98 per cent of those individuals being men; since the reinstatement of death penalty statutes, more than 47 persons have been released from death row because of later evidence of their innocence; nine juvenile offenders — individuals aged less than 18 at the time they committed the crime for which they were convicted — have been executed; information indicated that a significant degree of unfairness and arbitrariness in the administration of the death penalty still prevails and, in February 1997, the ABA called for a moratorium on executions until jurisdictions implement procedures and policies intended to ensure that death penalty cases are administered fairly and impartially; the guarantee of due process in capital cases has been seriously jeopardized following the adoption of the federal 1996 Anti-Terrorism and Effective Death Penalty Act which severely limits federal review of state court convictions and curtails the availability of *habeas corpus* at the federal level; and the withdrawal of funding for post-conviction defender organizations has seriously limited the extent to which fair trial standards are fully available during the process leading to the imposition of a death sentence.

The findings of the mission included, *inter alia*, that: the Senate was considering a proposal to reinstate the death penalty in Washington D.C. for those convicted of killing law enforcement officials; a number of states — including Alabama, Colorado, Delaware, Georgia, Indiana, New Hampshire, North Carolina and Tennessee — enacted laws increasing the number of aggravating circumstances which qualify a murder as a capital case; at the federal level, the Federal Death Penalty Act expanded the federal death penalty to more than 50 new offences, including a range of crimes involving murder of federal officials, attempted assassination of the President, treason, espionage and major drug-trafficking; the U.S. is one of the few countries where legislation at the state level, in those states permitting the death penalty, allows for the imposition of the death penalty on, and execution of, juveniles; information received from non-governmental sources indicated that at least 29 persons with severe mental disabilities had been executed in the U.S. since the death penalty was reinstated in 1976, and 28 capital jurisdictions at the state level were reported to permit the execution of mentally retarded defendants; the majority of death penalty sentences are imposed at the state level and the small percentage of defendants who receive a death sentence are not necessarily those who committed the most heinous crimes.

The SR also found that: many factors, other than the crime itself, appear to influence the imposition of a death sentence with class, race and economic status — both of the victim and the defendant — considered to be key elements as well as the influence of public opinion and political pressure and the racial attitudes of lawyers, prosecutors, juries and judges; allegations of racial discrimina-

tion in the imposition of death sentences are particularly serious in southern states such as Alabama, Florida, Louisiana, Mississippi, Georgia, and Texas; the Supreme Court has ruled that studies demonstrating statistically that the death penalty is racially discriminatory are not sufficient, and that each defendant must prove the existence of racial bias in the case and present "exceptionally clear proof" that "the decision makers in [the] case acted with discriminatory purpose"; this ruling has had the effect of allowing the courts to tolerate racial bias because of the great difficulties defendants face in proving individual acts of discrimination in their cases; the ruling may be incompatible with obligations undertaken under the International Convention on the Elimination of All Forms of Racial Discrimination, which requires states parties to take appropriate steps to eliminate both direct and indirect discrimination; the Racial Justice Act, passed by the House of Representatives as an amendment to the 1994 Crime Bill but rejected in the Senate, would have allowed the defendant to introduce evidence of racism by the use of statistics and would have removed the need to prove discriminatory intent on the part of any specific individual or institutions.

Commentary is also provided on a number of related concerns, including that: the system by which a number of judges are elected, rather than appointed for life, has raised concern about the independence of some judges who are exposed to a higher level of pressure than those who hold life tenures, do not have to run for re-election, and are not accountable to volatile public opinion; it has been alleged that in states where a judge may override the decision of a jury (e.g., Alabama, Delaware, Florida, and Indiana) some judges may not override or overturn a death sentence for fear of the repercussions this may have on their professional careers; it is very difficult for a judge who has reservations regarding the death penalty to be re-elected and, in state judicial elections, judges have been attacked for their decisions in death penalty cases. The report also notes: in all murder cases in which the death penalty may be sought, the prosecutor has the unreviewable discretion to decide to proceed with a capital charge or not, leading to a situation where some prosecutors will seek the death penalty almost all the time while others, in similar cases, will not; prosecutors have discretionary powers related to plea bargaining and instances in which they may seek the opinion of the family of the victim, with information indicating that in the latter there may be excessive discretion in the selection of which families the office of the prosecutor will or will not approach, leading to an increased risk of arbitrariness in imposing a sentence of death; and, at the federal level, more processes have been put in place to restrict or guide the discretion of the federal prosecutors, including the provision that the death penalty may only be sought with the written authorization of the Attorney-General. With regard to jury selection processes, as a practical matter the system tolerates the use of peremptory challenges along racial lines despite measures and stipulations prohibiting the practice; on the basis that the jury system was intended to represent the community as a whole, the community cannot be represented when

those opposed to the death penalty or have reservations about it seem to be systematically excluded from sitting as jurors; and reports indicate that the information juries receive concerning the meaning of the sentencing options varies according to the state (e.g., in Texas, the jury cannot be instructed on the meaning of "life imprisonment"), leaving open the possibility that in many cases jurors believe that by choosing life imprisonment the defendant may shortly be released from prison. The report also notes that with the decision by Congress in 1995 to stop funding for post-conviction defender organizations (PCDO) a situation has developed in which many death row inmates do not have legal representation at post-conviction level. On the Anti-Terrorism and Effective Death Penalty Act the report states that it will cause capital cases to proceed more quickly from state court to federal court, most substantive decisions will be made by state court judges, the role of the federal judge in state capital punishment cases will be substantially reduced, and a narrower scope of review will be established — leaving more aspects of the trial unreviewable and justice more dependent on the actions of the lower court judges.

The report refers to information indicating that there is a movement to speed up executions in state law, with some state laws requiring capital defendants to raise all their claims at a single appeal, limiting or eliminating the possibility of taking into account new evidence which becomes known at a later stage and to redress inadequacies caused by incompetent counsel. Reference is also made to the fact that: in some states, such as Texas, no public defender system exists, there is no institutional experience in defending death penalty cases, and most of the judges are former prosecutors, creating a climate far more favourable to the prosecution than to the defence; in several states, members of the board of pardons and paroles are appointed by the governor of the state, opening up the possibility of politicization of the pardon or commutation; in Texas, members of the parole or pardon board never meet, do not discuss the cases brought to their attention together, and provide their individual votes by phone; and recent studies show that people are not simply "in favour of" or "opposed to" the death penalty — 73 per cent of the people have inconsistent attitudes towards this punishment, indicating a need to differentiate between sporadic popular support of capital punishment and well-informed opinion.

In commentary on the awareness of international obligations, the report states that government officials and members of the judiciary at the federal and state levels — with the exception of officials in the Department of State — had little awareness of the ICCPR and the international legal obligations of the U.S. regarding the death penalty. It was brought to the SR's attention that state authorities had not been informed by the Federal government about the existence and/or ratification of this treaty, and were consequently not aware of it. The SR stated that no efforts appeared to have been undertaken by the Federal government to disseminate the ICCPR. The SR further stated that: there seems to be a serious gap in the relations between federal and state govern-

ments, particularly when it comes to international obligations undertaken by the former; the fact that the rights proclaimed in international treaties are already said to be a part of domestic legislation does not exempt the Federal government from disseminating their provisions; domestic laws appear *de facto* to prevail over international law, even if they could contradict the international obligations of the U.S.; there is a generalized perception that human rights are a prerogative of international affairs, and not a domestic issue; the fact that only the Department of State has a Human Rights Division, as well as the low level of awareness of international human rights standards within the Department of Justice, are clear indications of this phenomenon; and, while recognizing the important role played by the U.S. in the establishment and monitoring of human rights standards in many countries of the world, it appears that human rights do not seem to be taken seriously enough in the domestic arena.

Other areas of concern taken up in the report include, *inter alia*: the participation of victims in the justice system; the possibility that the strong movement for victims' rights may undermine the rights of the accused, including in such areas as the right to counsel and a further erosion in *habeas corpus* proceedings; the risk of executing the innocent; and, the execution of foreign nationals in light of information indicating that many of the foreigners who are currently sentenced to death were never informed of their rights under the Vienna Convention on Consular Relations and therefore denied their right to consular assistance.

The section on deaths resulting from excessive use of force by law enforcement and custodial officials notes a number of points, including that: deadly force nationwide is more likely to be disproportionately used on racial minorities; many police departments are trying to have a more balanced ethnic representation among their personnel in an effort to make them more representative of the local population; the existence of independent civilian review systems through which persons may file complaints of police misconduct offer the possibility of more impartiality in the investigations of allegations of such brutality; police departments have high written standards in regard to training and guidelines on the use of force but training is required at all levels to ensure they meet international standards; and, the low rate of criminal prosecution in cases of police brutality remains the principal cause for the perpetuation of violations of human rights by the police, in particular violations of the right to life.

On the issue of the low level of prosecution of police officers, the report notes that this is the result of: lack of proper investigations, with the investigations usually carried out by Internal Affairs Departments within police forces which have no independent subpoena power to call witnesses and compel their participation in proceedings; the fact that compensation for damages does not generally come from the police department but rather the municipality and, thus does not act as an incentive for the

police, allowing the situation to be perpetuated; police unions are reported to be an important political entity and make political endorsements, leading to situations in which police are likely to benefit from political protection; and the standards of criminal liability for police are very high, including the requirement that not only does it have to be proven that officers used unreasonable force, but also that they intended to use it.

The report recommends, *inter alia*, that the government:

- ♦ establish a moratorium on executions in accordance with the recommendations made by the ABA and resolution 1997/12 of the Commission on Human Rights;
- ♦ discontinue the practice of imposing death sentences on juvenile offenders and mentally retarded persons, and amend national legislation in this respect to bring it into conformity with international standards;
- ♦ not resume executions of women and respect the *de facto* moratorium in existence since 1984;
- ♦ review legislation, both at federal and state levels, so as to restrict the number of offences punishable by death; address the growing tendency to reinstate death penalty statutes and the increase in the number of aggravating circumstances, both at state and federal levels, in order not to contravene the spirit and purpose of article 6 of the ICCPR and the goal expressed by the international community to progressively restrict the number of offences for which the death penalty is applied;
- ♦ encourage the development of public defender systems so as to ensure the right to adequate legal representation for indigent defendants; reinstate funding for legal resource centres in order to guarantee a more appropriate representation of death row inmates, particularly in those states where a public defender system does not exist;
- ♦ take steps to disseminate and educate government officials at all levels, as well as develop monitoring and appropriate enforcement mechanisms to achieve full implementation of the provisions of the ICCPR, as well as other international treaties, at state level; develop an intensive programme aimed at informing state authorities about international obligations undertaken by the U.S. and at bringing national laws into conformity with these standards; increase the cooperation between the Department of Justice and the Department of State to disseminate and enforce the human rights undertakings;
- ♦ include a human rights component in training programmes for members of the judiciary and establish a campaign on the role of juries aimed at informing the public about the responsibilities of jurors;
- ♦ review the system of election of members of the judiciary at state level, in order to ensure a degree of independence and impartiality similar to that of the fed-

eral system, for example by providing that judges be elected for longer terms; in view of the above, consider inviting the Special Rapporteur on the independence of judges and lawyers to undertake a visit to the U.S.;

- ♦ withdraw the reservations, particularly on article 6, and the declarations and understandings entered to the ICCPR; ratify the Convention on the Rights of the Child; consider ratifying the first and second Optional Protocols to the ICCPR;
- ♦ ensure that all alleged violations of the right to life are investigated, police officials responsible brought to justice, compensation provided to the victims, and measures taken to prevent recurrence of these violations; ensure that the Justice Department systematically investigates patterns of use of lethal force; ensure that training on international standards on law enforcement and human rights is included in police academies; put in place independent organs, outside the police departments, to investigate all allegations of violations of the right to life promptly and impartially; and
- ♦ appoint special prosecutors more frequently — in order to avoid conflict of interest with the local district attorney's office — to conduct investigations into allegations of violations of the right to life, to identify perpetrators and bring them to justice.

The government provided a written response to the SR's report (E/CN.4/1998/174) in which the legal process and the protection of the rights of defendants in capital cases were outlined. The government criticized the report on the basis that it omitted valuable and extensive information provided to the SR on the "strong and effective" procedural protections in the U.S. against miscarriages of justice. The government also expressed the view that the SR should devote more time to the primary mandate — investigations in those countries where summary, arbitrary and extrajudicial executions are serious problems — and less time on the secondary mandate related to international standards on the death penalty, "particularly in countries where those international standards of due process are fully protected, as they are in the United States." The response provides narrative on, *inter alia*: treaties as law; the form of government in the U.S. — Republican with federal and state components; Courts of Appeal and District Courts; the relationship between Federal and State courts; the law and practice related to capital punishment; decisions by the Supreme Court vis-à-vis the Eighth Amendment of the Constitution; application of the death penalty with regard to juveniles and persons with mental disabilities; and, provisions and measures related to police brutality.

The report of the Secretary-General on the question of the death penalty (E/CN.4/1998/82, section "Comments from states") summarizes information provided by the government stating, *inter alia*: in a majority of states (currently 38 out of 50), voters have chosen through their freely elected officials to retain the death penalty for the

most serious crimes (almost without exception, aggravated murder); at the federal level, Congress has mandated capital punishment for certain very serious Federal crimes; under U.S. law, capital punishment is only carried out under laws in effect at the time of the offence and after exhaustive appeals; the Supreme Court has held that the Eighth Amendment to the Constitution (which proscribes cruel and unusual punishment) does not prohibit capital punishment; the death penalty cannot be imposed even for such serious crimes as rape, kidnapping, or robbery unless they result in the death of the victim; and, that the crime resulted in death is not per se sufficient to trigger imposition of capital punishment.

The report notes that, according to the government: it is further required that the crime have attendant aggravating circumstances; these restrictions on the imposition of the death penalty arise out of the constitutional requirement that the punishment not be disproportionate to the personal culpability of the wrongdoer and the severity of the offence; U.S. law places special emphasis on due process protection for those accused of capital offences and almost all of the 38 states whose penal codes include capital punishment statutes provide for both automatic review of each death sentence and automatic review of the conviction; those states that do not mandate automatic review of capital sentences nevertheless authorize review when the defendant wishes to appeal; typically, review is undertaken automatically regardless of the defendant's wishes and is conducted by the state's highest appellate court; if an appellate court vacates either the sentence or the conviction, it may remand the case to the trial court for additional proceedings or for retrial; as a result of re-sentencing or retrial, it is possible for the death sentence to be reimposed; and the Supreme Court has found that where a sentencing jury may impose capital punishment, the jury must be informed if the defendant is ineligible for parole, in other words, where a sentence of lifetime imprisonment could not result in parole.

The report also notes that, according to the government: Congress passed the Anti-Terrorism and Effective Death Penalty Act in 1996, which introduced a series of improvements to federal criminal procedure, including a partial reform of the federal law governing *habeas corpus* petitions; a state may not prohibit acts of executive clemency, including amnesty, pardon, and commutation of sentence; the Supreme Court has recognized the availability of executive clemency for persons facing the death penalty whose convictions have been affirmed, whose collateral appeal rights have been exercised and exhausted, and who thereafter present a newly articulated claim of factual innocence; and, the ex post facto clause of the Constitution bars retroactive increases in the penalties available in criminal cases and forbids the government from imposing the death penalty on an offender for a crime that was not subject to capital punishment at the time it was committed.

The government also stated, *inter alia*, that: under U.S. law, capital punishment may be imposed on wrongdoers

who were 16 or 17 years of age at the time of the offence; the Supreme Court has held the imposition of capital punishment upon persons who were 15 years of age when they committed the offence to be unconstitutional; four of the nine Justices hearing the case establishing a lower threshold of 16 years dissented, contending that execution of an offender under 18 years of age is disproportionate and unconstitutional; 12 states have declined to impose capital punishment on persons 17 years of age or younger, and 15 declined to impose it on 16-year-olds; the execution of criminals who were 16 or 17 years old at the time they committed serious crimes resulting in death is rare.

Information further indicated, *inter alia*, that: both federal and state law provide significant protection against the trial, conviction, and punishment of individuals with significant mental infirmities or disabilities; the law prohibits the execution of individuals determined to be legally insane; in many, but not all, states the defendant cannot be held responsible if he or she reacted to an "irresistible impulse" or is incapable of acting responsibly by reason of mental or emotional disability; on the basis that not all people with mental disabilities are legally insane, some persons with mental disabilities have been found legally capable of resisting impulses and acting responsibly; no one, including persons with mental disabilities, can be forced to stand trial unless they are mentally competent; the legal standard for competence, together with the bar on the prosecution of the insane and the other defences, limit significantly the prosecution of persons with mental disabilities; and, the execution of persons with mental disabilities who are judged competent to stand trial for capital offences is very rare, because many states regard mental disability as an important mitigating factor to be considered during sentencing.

**Mercenaries, Special Rapporteur on the use of:**  
(E/CN.4/1998/31, paras. 20, 22)

The report refers to an official communication from Cuba related to the detention of a Salvadoran citizen who had reportedly been trained in the United States and who had admitted to being a mercenary and the perpetrator of various attacks on hotel and tourist facilities in Cuba. The report notes that the Special Rapporteur requested information from the U.S. government about any investigations being carried out, particularly in Florida, to determine to what extent groups opposed to the Cuban government might be responsible for the commission of illegal acts against Cuba.

The response of the government is contained in the addendum to the main report (E/CN.4/1998/31/Add.1, paras. 1–2) and states, *inter alia*: the U.S. does not support violence as a means of achieving political change, and does not support organizations that advocate violence; the government strongly condemned the bombings of hotels in Havana and will continue to condemn

the use of terrorism; with regard to Cuban groups in the U.S. and, specifically, the Cuban American National Foundation (CANF), the government did not have any information substantiating the alleged links between groups based in the U.S. and the bombings in Cuba; on at least six occasions, via diplomatic channels and in meetings, the government had officially asked the Cuban government to provide any information or evidence it has to substantiate allegations that such groups or individuals are responsible for the bombings and given assurances that it will investigate such charges as the evidence warrants; the Cuban government has refused to provide the evidence it claims to have in its possession to support its allegations; and, when warranted, the government has investigated cases for which the Cuban Government may have provided substantive information and evidence.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/1998/79, paras. 20, 33, 53, 107, 113–117)

The report notes that in the U.S., despite progress achieved owing to "affirmative action", inequalities between Whites and Blacks were still very pronounced in structural, economic, social, and cultural respects.

The report refers to the President's initiative on race, "One America in the 21st Century", announced in June 1997. The goals of the initiative are noted as including to: articulate the President's vision of racial reconciliation and a just, unified America; educate the nation about the facts surrounding the issue of race; promote a constructive dialogue to confront and work through the difficult and controversial issues surrounding race; recruit and encourage leadership at all levels to help bridge racial divides; and, find, develop, and implement solutions in such critical areas as education, economic opportunity, housing, health care, crime and the administration of justice. The elements of the initiative were: the establishment of a diverse seven-member advisory board to examine the current state of racial discrimination and recommend appropriate corrective measures to the President; a nationwide campaign by the President to raise public awareness; outreach to community leaders, businessmen, state and local officials, members of Congress, business leaders and individuals, encouraging them to become involved in reconciliation and community building projects; and a President's Report to the nation on the status of the race issue. The President's Report was to: include an assessment of the growing diversity of the nation and the results of the President's consultations with the Advisory Board; reflect the work done during the first year of implementation of the initiative; report on how the nation has evolved on the issue of race over the last 30 years; and make recommendations and propose solutions enabling individuals, communities, businesses, organizations and government to address difficult issues and to create a society built on a sounder basis. [Note: the President's Report was issued at the end of September 1998.]

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:**

(E/CN.4/1998/101, paras. 11–12, 21, 45, 55, 61, 62, 76, 104, 105)

The report notes that more than 40 states in the U.S. have adopted versions of "Megan's Law", which requires that communities be informed when a convicted paedophile moves into the area. The law is named after a seven-year-old victim who was raped and murdered in 1994 by a twice-convicted paedophile who, together with two other convicted sex offenders, moved into a house almost opposite the home of his victim. The crime took place in a quiet suburban street, and created a feeling of insecurity in supposedly safe middle-class neighbourhoods. The report also refers to the case of the Roman Catholic Church of Dallas having been ordered to pay US\$119 million in damages for ignoring evidence and covering up the long term sexual abuse of 11 altar boys by a priest. The report notes that one of the priest's victims later committed suicide allegedly as a result of the abuse.

On trafficking in children, the report refers to an investigation in Italy that broke up an international paedophile ring in which children were smuggled from East Asia to the United States. Investigators indicated that there was a Japanese organized group which allegedly sent Chinese children to the U.S. for prostitution and paedophilia.

In commentary on the participation of children in the media and fears about the "soft porn" label being given to mainstream material, the Special Rapporteur (SR) stated that such concerns were raised in regard to a controversial movie entitled "Kids", which was banned from general release in the U.S. in 1996 on the basis that it graphically depicted promiscuous under-age sex and drug taking. With regard to the protection of children against harmful influences through the media, the report notes that a new system of television ratings referred to as "The TV Parental Guidelines" has been widely criticized by child advocacy groups who argue for a non-judgmental rating system which would indicate the content of the individual programmes rather than making a recommendation on the age of the child who should see it. Research carried out by the American organization Mediascope on behalf of the National Television Violence Study found that where children saw a rating entitled "PG-13: Parents Strongly Cautioned", and "R: Restricted", they were more eager to see the movie than when it was given a content label such as "mild violence" or "graphic violence".

In commentary on other communications technologies the report refers to the so-called "dial-a-porn" or phone sex services which emerged in the 1980s and have become a large industry in several countries, including the U.S. The report notes that the U.S. Congress passed specific legislation that criminalized certain dial-a-porn activities. For example, the Telecommunications Act was amended to prohibit dissemination of obscene or indecent commercial telephone services in interstate or foreign communications to persons under 18 years of age. The Federal Communications Commission subsequently determined that dial-a-porn providers would only be able

to conduct business between the hours of 9.00 p.m. and 8.00 a.m. or must receive payment by credit card before transmitting an adult message. The report notes that since 1983, legislative, executive and judicial bodies of the government have developed a series of regulations and legislation, seeking a constitutionally acceptable solution to the problem.

With regard to children as viewers of sexually explicit material on the Internet, the report refers to proposals related to the introduction of a system of mandatory signatures which would help in identifying the origin of messages on the Internet, similar to the system of having assigned telephone numbers. Caution was expressed by a representative of the U.S. in terms of the introduction of measures aimed at restricting the use of anonymity on the Internet because, in some countries, this anonymity is the only way to criticize the government and, if lost, would make it possible for governments to trace dissidents and restrict their freedom of expression. The report recalls that the U.S. Supreme Court has ruled that a federal law which sought to curb indecency on the Internet, through provisions of the Communications Decency Act of 1996 (CDA), was unconstitutional. Opponents of the CDA successfully argued that the two challenged provisions of the CDA that were directed to communications over the Internet which might be deemed "indecent" or "patently offensive" for minors — defined as persons under the age of 18 — infringed upon rights protected by the First Amendment to and the due process clause of the Fifth Amendment.

The Special Rapporteur's interim report to the 1998 General Assembly (A/53/311, para. 87) notes that, in an effort to combat trafficking in women and children, the U.S. and Italy recently established a Working Group on Trafficking in Women and Children. At the Group's first meeting in Rome in April 1998, certain joint actions were agreed, including: the exchange of best practices with respect to assistance, protection and social integration of victims; implementation of common initiatives, including joint programme strategies for victim outreach, separately in the U.S. and Italy which should provide for the protection of victims' families in source countries; training for law enforcement, immigration and border officials in source countries to help them to identify patterns and methods of trafficking and prevent trafficking through effective investigation and prosecution; and the development of witness protection procedures and victim services in source countries for cases of repatriation, including training for law enforcement officials and assistance to NGOs that provide victim services.

**Torture, Special Rapporteur on:** (E/CN.4/1998/38, paras. 198–203; E/CN.4/1998/38/Add.1, paras. 450–463)

The main report notes that the Special Rapporteur (SR) had received information addressing, in particular, allegations of the use of excessive force by police officers in the New York City Police Department (NYPD) and the ill-treatment of inmates in prisons. Comments on actions by officers in the NYPD referred to excessive physical force

in the course of arrests, disputes in public places, and sometimes in police custody with repeated kicking and punching with fists, batons or other objects being the most frequently reported forms of ill-treatment. Reports indicated that force was sometimes used after the suspect had already been handcuffed or otherwise restrained and, in other cases, suspects were said to have died after police officers had forcibly restrained them through such practices as applying pressure to the chest or neck, or placing suspects face-down in restraints with resulting restrictions on respiratory movement. The report notes that victims were said to come from various backgrounds although many were alleged to be members of racial minorities.

Concerning ill-treatment of inmates in prisons, the report notes that concerns had been expressed over the reintroduction of chain gangs in such states as Alabama, Arizona and Florida that might constitute a form of cruel, inhuman or degrading treatment or punishment. Prisoners in chain gangs were reportedly required to perform heavy manual labour — such as rock-breaking or clearing rubbish from highways — while shackled together or with their own legs chained together, exposed to the public. Information indicated that in Alabama, for example, prisoners attached to chain gangs were said to have to work 10 to 12 hours a day dressed in work suits imprinted with the words “Alabama chain gang”. The chain gangs were said to be guarded by armed officers and dogs and prisoners reportedly had to remain chained when using toilet facilities. The SR noted that efforts had been undertaken to prohibit the practice in Alabama, but the outcome of those efforts was not known to the SR. Reports concerning Alabama also referred to the practice of handcuffing prisoners to a hitching rail in the hot sun as punishment for refusal to work, causing numbness, dizziness and pain.

The report notes that allegations were also received concerning the abusive use of electro-shock stun belts and stun guns. These stun devices, which incapacitate an inmate by transmitting electric shocks, can reportedly cause high levels of pain and may result in serious injuries, possibly even death in certain circumstances. Information indicated that prolonged or repeated application of stun devices is not sufficiently prevented by their technological design and the devices may also have indiscriminate effects to the extent that people in contact with the target can receive shocks as well. The report notes that some states — including New York, Illinois and New Jersey, as well as Washington, D.C. — had banned the use of stun weapons for law enforcement and correctional purposes, but they were still being used in several other states.

The report also referred to a decision of the Federal Bureau of Prisons in 1994 to introduce remote controlled electro-shock stun belts to prevent high risk inmates from escaping during transportation and court appearances. The report notes that, despite the fact that the exact medical effects of the stun belt were unknown, its use was said to have been promoted as an alternative to

shackles or leg-irons. Activation of the belt reportedly transmits a 50,000 volt shock to the left kidney, through blood vessels and nerves, for eight seconds, causing severe pain, instant immobilization, and possibly involuntary defecation and urination. Information indicated that stun belts had been used as restraints during judicial hearings in violation of the Standard Minimum Rules for the Treatment of Prisoners, which prohibit the use of restraints on prisoners when appearing before a judicial authority.

The SR expressed concern at the use of practices such as chain gangs, instruments of restraint in court and stun belts and stun guns, some of which can only be intended to be afflictive and degrading, others of which have the same effect. The SR urged the government to use all means, including judicial ones, to review the compatibility of such measures with the affected persons’ civil rights.

Individual cases transmitted to the government related to allegations of excessive use of force by police officers in the NYPD, including: assault on an African-American man who was standing in a crowd of people watching the arrest of another man, with two police officers subsequently charged with assault; ill treatment of a Latino supermarket employee who was mistaken for a suspect in an earlier armed robbery at the same supermarket, with the victim thrown to the floor with his hands handcuffed behind his back, repeatedly hit on the back of the head with pistols and sticks, and kicked in the back, chest and legs, noting that the case was pending before the Civilian Complaint Review Board; death following a struggle with police officers called to a private home in relation to a domestic disturbance, with the death classified by the New York City Medical Examiner as homicide and attributable to a combination of factors including heart disease, asthma, exposure to pepper spray, and a “struggle involving multiple blunt impacts”, noting the incident was under investigation; and, death the day after arrest, with a report from the New York City Medical Examiner stating that acute cocaine intoxication was the underlying cause of death, but also noting that the victim had sustained “multiple blunt impacts” to his head and body during a struggle with police officers which contributed to the death, noting that the case was under investigation by the Brooklyn District Attorney’s office.

The cases involving allegations of ill treatment of inmates in prisons involved: beating and broken limbs following verbal abuse of officers by the inmate; kicking and beating and, while injured, being strapped into a restraint chair for five hours; accidental incapacitation by a stun belt of a defendant who was talking to his attorney during a break in a pretrial court hearing; broken bones and other injuries sustained by a prison who was thrown against a wall for falling asleep during processing and the possible use of a stun gun to wake him up; the forcing of a defendant to wear a stun belt, even though he was sitting in a wheelchair, during his whole trial, as well as shackles, because the judge reportedly was not convinced of the defendant’s disabilities, with accidental stunning

occurring at least once; the use of a stun gun on a prisoner already strapped into a restraint chair; placement of a prisoner who was a paraplegic in a wheelchair in an isolation cell for one hour without medical attention despite his request for a catheter to empty his bladder, followed by being strapped into a four-point restraint chair, with his arms padlocked and his legs in metal shackles after he had called for medical help; and, death in prison as a result of asphyxia, when detention officers who had intervened because of the prisoner's alleged disruptive behaviour tried to overcome his resistance.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/1998/10, paras. 54, 62; E/CN.4/1998/10/Add.1, section "Comments received from states")

The report notes that among the countries of the Organization for Economic Cooperation and Development (OECD) the United States is one of the biggest waste exporters, with legal exports being conducted under recycling programmes. The report states that half of U.S. exports through recycling go to Latin America.

The government's response to information included in the Special Rapporteur's (SR) report to the 1997 Commission (E/CN.4/1997/19) noted, *inter alia*: the U.S. has stringent laws regarding the management and disposal of hazardous wastes and the transboundary movement of these wastes and has long supported the underlying principles of the Basel Convention; most of the allegations contained in the SR's report did not fall within the mandate as established by the Commission; the vast majority of cases mentioned had nothing to do with illicit trafficking and dumping of hazardous wastes; these include alleged cases involving operations in Indonesia, Papua New Guinea, Burma, Peru and Nigeria; in addition to exceeding the mandate, these cases involve issues that are matters of local jurisdiction, questions for local authorities or domestic business arrangements established under, and subject to, local regulations; the allegation regarding the placement of hazardous wastes within the U.S., based on socio-economic and racial factors, touches on an issue of great importance domestically, but is likewise clearly beyond the scope of the mandate, in particular given that the U.S. is not a developing country; the alleged export of pesticide is similarly beyond the mandate because it deals with goods in commerce, not with hazardous wastes; the issue of the export of banned or restricted chemicals and pesticides is an important issue and is being addressed in the ongoing negotiations on a convention for prior informed consent on the trade in certain toxic chemicals and pesticides, not within the Basel Convention, because this substance is not waste; exports of battery scrap to the Philippines were undertaken under provisions in U.S. law which allow the proper export of certain battery scrap for recycling operations and the U.S. supports environmentally sound recycling programmes; no information was provided in the SR's report regarding the types of hazardous wastes that are alleged to have been exported to Bharat Zinc in India; with regard to exports of "waste paper" to

Argentina, the U.S. does not restrict the proper export of waste paper for recycling and, in fact, supports environmentally sound paper recycling programmes that reduce the demand for new raw materials from forests; and, with regard to illegal dumping of wastes in Mexico, any legal trade in hazardous wastes between the U.S. and Mexico is governed under a bilateral hazardous waste agreement and any allegations of illegal waste dumping are addressed through bilateral cooperation mechanisms between American and Mexican environmental officials.

**Violence against women, Special Rapporteur on:** (E/CN.4/1998/54, Sections I.A, II.E, III.B)

The report refers to the case of a Korean woman who was sexually tortured and murdered by a private serving in the U.S. Army stationed in South Korea. The report notes that the Korean Supreme Court sentenced the soldier to 15 years' imprisonment and states that this and other cases in, and involving nationals of, other countries illustrates the need for the international community to deal with the issue of abuses committed by foreign military personnel in a more systematic manner, especially if there continues to be a need for international peacekeepers.

The section of the report dealing with custodial violence and national measures to address the problem notes that in the U.S. sexual abuse of one inmate by another constitutes a federal criminal violation of civil rights, if it can be proved that the inmate's actions were taken with approval or encouragement of a law enforcement officer.

With regard to violence and persecution as grounds for seeking asylum, the report refers to the U.S. "Guidelines on Gender Issues in Asylum Claims" which recognize a variety of forms of gender-related persecution and sexual violence including: sexual abuse, rape, infanticide, female genital mutilation, forced marriage, slavery, domestic violence and forced abortion. Two cases noted in the report. The first involved the granting of asylum to a woman from Sierra Leone following the provision of independent evidence which demonstrated that violence against women, especially wife beating, is common, disobedience on the part of a wife is considered a justification for punitive measures by the husband, police are unlikely to intervene except in cases of severe injury or death, and few cases of violence go to court. The second related to the denial of asylum to a woman from Iran who had based her claim on persecution because of her membership in a particular social group and her political opinion, viz. being forced to submit to the traditional Muslim view of a woman's proper role within society, including wearing the chador or veil while in public, and asserting that discriminatory treatment of women in Iran was in direct conflict with her belief in freedom of expression and equality of the sexes. The claim was denied on the basis that the administrative record did not establish that Iranian feminists are generally subject to treatment so harsh as to qualify as persecution.

## APPENDIX: HUMAN RIGHTS TREATY BODIES

### DRAFT SCHEDULES FOR CONSIDERATION OF STATE REPORTS

The following schedules of the treaty bodies was prepared after the country profiles were completed. This accounts for any discrepancies that may appear between information in the profiles, related to consideration of state reports, and the information contained below. Please note: the following schedule was compiled at the beginning of February 1998 and is subject to change at short notice.

#### COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

The provisional schedule of reports and/or situations to be considered by the Committee is:

##### 20th Session: 26 April-14 May 1999

Denmark . . . . .	3rd periodic report . . . . .	E/1994/104/Add.15
Iceland . . . . .	2nd periodic report . . . . .	E/1990/6/Add.15
Ireland . . . . .	Initial report . . . . .	E/1990/5/Add.34

##### 22nd Session: April 2000

Belgium . . . . .	2nd periodic report . . . . .	E/1990/6/Add.18
Italy . . . . .	3rd periodic report . . . . .	E/1994/104/Add.19
Portugal . . . . .	3rd periodic report . . . . .	E/1994/104/Add.20

##### 23rd Session: November 2000

Australia . . . . .	3rd periodic report . . . . .	E/1994/104/Add.22
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#### HUMAN RIGHTS COMMITTEE (HRC OR CCPR)

The provisional schedule of reports and/or situations to be considered by the Committee is:

##### 64th Session: March 1999

Canada . . . . .	4th periodic report . . . . .	CCPR/C/103/Add.5
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#### COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

The provisional schedule of reports and/or situations to be considered by the Committee is:

##### 54th Session: 1-19 March 1999

Austria . . . . .	11th— 13th periodic reports . . . . .	CERD/C/319/Add.5
Australia Re: Native Title Act		
Finland . . . . .	13th and 14th periodic reports . . . . .	CERD/C/320/Add.2
Italy . . . . .	10th and 11th periodic reports . . . . .	CERD/C/317/Add.1
Portugal . . . . .	5th-8th periodic reports . . . . .	CERD/C/314/Add.1

#### COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The provisional schedule of reports and/or situations to be considered by the Committee is:

##### 20th Session: 19 January-6 February 1999

Austria . . . . .	3rd and 4th periodic reports . . . . .	CEDAW/C/AUT/3-4
Greece . . . . .	2nd and 3rd periodic reports . . . . .	CEDAW/C/GRC/2-3
United Kingdom . . . . .	3rd periodic report . . . . .	CEDAW/C/UK/3; CEDAW/C/UK/3/Add.1; CEDAW/C/UK/3/Add.2

**21st Session: June 1999**

Germany	2nd and 3rd periodic reports	CEDAW/C/DEU/2-3
Ireland	2nd and 3rd periodic reports	CEDAW/C/IRL/2-3
Spain	3rd periodic report	CEDAW/C/ESP/3

**COMMITTEE AGAINST TORTURE (CAT)**

The provisional schedule of reports and/or situations to be considered by the Committee is:

Italy	3rd periodic report	CAT/C/44/Add.2
Liechtenstein	2nd periodic report	CAT/C/29/Add.5
Luxembourg	2nd periodic report	CAT/C/17/Add.20
Malta	2nd periodic report	CAT/C/29/Add.6
Netherlands	3rd periodic report	CAT/C/44/Add.4 (Antilles and Aruba)

**COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)**

The provisional schedule of reports and/or situations to be considered by the Committee is:

**20th Session: January 1999**

Austria	Initial report	CRC/C/11/Add.14
Sweden	2nd periodic report	CRC/C/65/Add.3

**22nd Session: September 1999**

Netherlands	Initial report	CRC/C/51/Add.1
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**24th Session: May 2000**

Malta	Initial report	CRC/C/3/Add.56
Norway	2nd periodic report	CRC/C/70/Add.2

**25th Session: September 2000**

Finland	2nd periodic report	CRC/C/70/Add.3
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**26th Session: January 2001**

Denmark	2nd periodic report	CRC/C/70/Add.6
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**27th Session: May 2001**

Liechtenstein	Initial report	CRC/C/61/Add.1
United Kingdom (Isle of Man)	Initial report	CRC/C/11/Add.19 (Isle of Man)

**28th Session: September 2001**

Portugal	2nd periodic report	CRC/C/65/Add.11
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